

Dt. Komitee zum Humanitären Völkerrecht [ed.]

# National Implementation of International Humanitarian Law

Document on the Implementation of IHL  
in the German Legal System



**Nomos**

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## I. Introduction

International Humanitarian Law (IHL) safeguards humanity in the dire circumstances of armed conflict. Every High Contracting Party to the 1949 Geneva Conventions (GC)<sup>1</sup>, the backbone of IHL, undertakes to respect and to ensure respect for the Conventions in all circumstances (Common Art. 1 to the GC). This obligation also forms part of customary international law. The implementation of the Geneva Conventions, their Additional Protocols<sup>2</sup> and IHL in general in each High Contracting Party's national legal system is an essential measure to ensure this respect.

The present document on the German implementation of IHL intends to give an overview of the steps the Federal Republic of Germany has taken to implement IHL in its national jurisdiction. It addresses the status of IHL in the German legal system, the status and control of the German Armed Forces, implementation measures concerning, *inter alia*, the protection of civilians and civilian objects, dissemination, and education as well as the enforcement of IHL. It aims to compile information about relevant implementation measures, without being exhaustive, in order to facilitate the understanding of IHL's application and operation within the German legal system. The document is broadly addressed to anyone with an interest in IHL, including government officials, parliamentarians, IHL practitioners

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- 1 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GC I),  
Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GC II),  
Geneva Convention (III) relative to the Treatment of Prisoners of War (GC III),  
Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (GC IV),  
all of 12 August 1949.
- 2 Protocol Additional (I) to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (AP I),  
Protocol Additional (II) to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (AP II),  
both of 8 June 1977;  
Protocol Additional (III) to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (AP III) of 8 December 2005.

## *I. Introduction*

ers, staff of non-governmental organisations, academics, journalists and the general public, both inside and outside Germany.

The document has been compiled by the German Committee on International Humanitarian Law and builds on previous reports developed by the Committee in the late 1990s, first published in 2002 and updated in 2004, 2006, 2010 and 2014.

## II. Status of International Humanitarian Law in the German Legal System

### 1. Status of relevant IHL Treaties

Under the German constitution, the Basic Law for the Federal Republic of Germany<sup>3</sup> (*Grundgesetz* – GG; hereafter: “Basic Law”), the conclusion of international treaties that regulate the political relations of Germany or relate to subjects of federal legislation requires the consent or participation, in the form of a federal law, of the bodies responsible for the enactment of federal law (Art. 59 para. 2 cl. 1 Basic Law). By way of a federal legislative act (*Vertragsgesetz*), the German legislature incorporates international treaties into German law. The treaty in question is published in the Federal Law Gazette (*Bundesgesetzblatt*) as an annex of the *Vertragsgesetz*. Thus, international treaties enjoy the status of a federal law within the German legal system. Accordingly, the four Geneva Conventions and their Additional Protocols received Parliamentary consent by a federal law in 1954 and 1991 respectively and thus have the status of national legislation.

The question of whether or not a treaty provision is directly applicable in Germany is to be distinguished from the process of transposing a treaty into domestic law. Norms of international law may apply directly, if they are by virtue of their wording, their object and purpose and their content sufficiently clear and adapted to apply like national norms without the requirement of further legislative action (self-executing). Art. 75 AP I, for instance, is formulated in terms of unconditional prohibitions and duties and is therefore considered to be self-executing and directly applicable law. Other IHL treaty provisions are, however, interpreted as not being self-executing in this sense, for example Art. 3 Hague Convention (IV) respecting the Laws and Customs of War on Land or Art. 91 AP I.<sup>4</sup>

Since international treaty obligations generally have the same legal status as other federal statutes, the general rules relating to conflicting statutory provisions apply, i.e. the rules of *lex specialis*, *lex superior* and *lex posterior*. While this generally means that specific rules of an international treaty may be set aside by conflicting superior law, such as the Basic Law itself, by

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3 [https://www.gesetze-im-internet.de/englisch\\_gg/](https://www.gesetze-im-internet.de/englisch_gg/) (Accessed 31 August 2020).

4 See VI. 5.

## *II. Status of International Humanitarian Law in the German Legal System*

more specific rules or by a conflicting later law, there are important particularities. Chief among them is the principle that the Federal Constitutional Court (*Bundesverfassungsgericht*) consistently emphasises as the principle of the Constitution's openness to international law.<sup>5</sup> This is based on the objective underlying the Basic Law to avoid conflicts between domestic law and Germany's obligations under international law, wherever possible. This being the case, whenever domestic law is interpreted, it is presumed that the interpretation of the domestic law shall comply with international obligations applicable to the situation at hand, meaning that the national laws have to be construed in line with Germany's international obligations.

### 2. Status of Customary International Law

According to Art. 25 Basic Law, "general rules of public international law shall be an integral part of federal law", thus customary international law and general principles of law are directly applicable in the German legal system. They take precedence over domestic legislation but are below the level of the constitution, the Basic Law, itself. These rules can also be directly applied by courts provided their content is of a nature that permits direct application.<sup>6</sup>

Art. 100 para. 2 Basic Law provides for a special judicial proceeding, according to which any national court, in cases of doubt as to whether a rule of international law is an integral part of federal law or whether it is possible to derive direct rights or obligations of the individual thereof, can and shall obtain a decision from the Federal Constitutional Court.

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<sup>5</sup> The latest prominent example is the Judgment of the Second Senate, BVerfG (Federal Constitutional Court), Judgment of the Second Senate of 12 June 2018 – 2 BvR 1738/12; para 69 et seqq.; English translation available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/06/rs20180612\\_2bvr173812en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/06/rs20180612_2bvr173812en.html) (Accessed 31 August 2020); see also BVerfG (Federal Constitutional Court), Order of the Second Senate of 15 December 2015 – 2 BvL 1/12; para. 58 with further references.

<sup>6</sup> See VI. 5.

### III. Status and Control of the German Armed Forces

The fundamental organisational and administrative requirements for the German Armed Forces (*Bundeswehr*) are laid down in the Basic Law, which regulates the establishment of the German Armed Forces, the general prohibition of their employment within Germany, the command of the German Armed Forces and specific parliamentary oversight mechanisms.

As an “Army of the Parliament” (*Parlamentsarmee*) the German Armed Forces are subject to parliamentary control. Thus, the numerical strength and the general organisational structure of the German Armed Forces must be shown in the budget (Art. 87 a para. 1 Basic Law). The budget is adopted annually as a budget law by the *Bundestag* (i.e. the lower house of the national parliament of the Federal Republic of Germany). The Defence Committee of the *Bundestag* has a special status as the only committee with the autonomous right to convene as a committee of inquiry (Art. 45 a para. 2 Basic Law) and thus constitutes a strong tool in the scrutiny of government actions. Art. 45 b Basic Law provides for a Parliamentary Commissioner appointed to safeguard the basic rights of soldiers and to assist the *Bundestag* in exercising parliamentary control over the German Armed Forces.

In 1994, the Federal Constitutional Court ruled in a landmark decision that any deployment of German Armed Forces abroad in which there is a well-founded expectation that soldiers of the *Bundeswehr* will be involved in armed activities would need the consent of the *Bundestag*. This consent is, in political language, the “parliamentary mandate” for the deployment. The requirements for a parliamentary mandate were set out in the Parliamentary Participation Act of 2005 (*Gesetz über die parlamentarische Beteiligung bei der Entscheidung über den Einsatz bewaffneter Streitkräfte im Ausland, Parlamentsbeteiligungsgesetz*). For the deployment of German Armed Forces abroad as described above, the Parliament must give its approval generally in advance. The Federal Constitutional Court has further ruled that in cases of imminent risk, the Federal Government has the right to authorise immediate action by German Armed Forces. In such cases, subsequent parliamentary approval of the ongoing deployment suffices. However, if the mission has already come to an end before parliamentary approval could be sought (e.g. military evacuation operations), the *Bundestag* does not have to approve the deployment, but has to be informed of it in a qualified man-

### *III. Status and Control of the German Armed Forces*

ner to enable it to exercise its oversight. The exercise of parliamentary oversight goes well beyond IHL compliance in deployments abroad but also constitutes an important national enforcement mechanism to ensure the German Armed Forces' compliance with IHL.

Additional measures Parliament and members of Parliament can, and regularly do, adopt in order to promote respect for and the development of IHL, include the deliberation of IHL-related issues, in particular within its Committees (such as the Committee on Human Rights and Humanitarian Aid), as well as the submission of major and minor interpellations involving IHL-related questions addressed to the Federal Government.<sup>7</sup>

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<sup>7</sup> Parliament's rights to submit interpellations and questions to the Federal Government are based on Arts. 20 and 38 Basic Law and regulated in the Rules of Procedure of the Bundestag (Rules 100–106).

## IV. Implementation Measures

Germany underscores its commitment to respect and to ensure respect for the GC in all circumstances and to comply with international law in general by taking specific implementation measures. For instance, rules concerning the use of force in general and in circumstances of armed conflicts in particular can be found at every level and in different branches of German legislation (e.g. the Basic Law and the German Criminal Code). The implementation of these rules is flanked by an active policy of distribution, dissemination and legal training of the individuals concerned.

With regard to Germany's Armed Forces, the Federal Ministry of Defence implements IHL and additional rules, shaping German national practice, above all with its Law of Armed Conflict Manual (*Zentrale Dienstvorschrift A-2141/1, Humanitäres Völkerrecht in bewaffneten Konflikten*, latest revision 18 February 2018, hereafter: LOAC Manual<sup>8</sup>). The LOAC Manual is a key instrument for implementing IHL and serves soldiers and civilian personnel at all command levels in training courses, military exercises and general training. It describes IHL from the point of view of the Federal Ministry of Defence and includes historical developments in humanitarian law as well as rules for the application of humanitarian law in armed conflicts. This implementation report does not aim to restate IHL norms or repeat the LOAC Manual in full but will refer to it whenever appropriate.

### 1. Protection of Civilians and Civilian Objects

#### a. Distinction between Civilian Objects and Military Objectives

For Germany, the protection of the civilian population during armed conflicts is of the utmost importance and highest priority. The constant distinction between protected civilian objects and military objectives during

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<sup>8</sup> An English translation of a prior version (Joint Service Regulation (ZDv) 15/2) is accessible under <https://www.bmvg.de/resource/blob/93610/ae27428ce99dfa6bbd8897c269e7d214/b-02-02-10-download-manual-law-of-armed-conflict-data.pdf> (Accessed 31 August 2020). The new version currently in force does not include a changed content.

#### *IV. Implementation Measures*

military operations in armed conflict settings is one of the core obligations of IHL. Attacks during armed conflicts, i.e. any “acts of violence against the adversary, whether in offence or in defence” (Art. 49 para. 1 AP I), shall be limited strictly to military objectives (Art. 52 para.2 AP I). The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations (Art. 51 para. 1 AP I), unless and for such time as they take a direct part in hostilities (Art. 51 para. 3 AP I). Civilian objects, i.e. all objects which are not military objectives, shall not be the object of attack or of reprisals.

The definition of “military objectives” used in the LOAC Manual is congruent with Art. 52 para. 2 AP I and explains the rules by way of examples (LOAC Manual, para. 406 et seqq.) (references omitted):

*“Military objectives are adversary forces and objects that, by their nature, location, purpose or use, make an effective contribution to military action and whose total or partial destruction, capture or neutralisation in the circumstances ruling at the time offers a definite military advantage, unless these objects enjoy special protection under international law. The term ‘military advantage’ refers to the advantage that can be expected of an attack as a whole and not only of specific parts of the attack. If these conditions are met, the following objects specifically are considered military objectives:*

- the armed forces and military installations of a Party to a conflict,*
- military aircraft, land vehicles and warships,*
- buildings and objects for combat service support and*
- economic targets such as armaments factories, traffic installations, industrial plants or telecommunication facilities, which contribute effectively to military activities.*

*Even specific areas can be military objectives, provided all conditions are fulfilled.*

*Civilian objects must not be the object of attack or of reprisals. An unlawful attack against civilian objects that are protected as civilian objects by LOAC is punishable as a war crime. Civilian objects are all objects which are not military objectives such as buildings dedicated to religion, education, art, science and charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected and undefended towns, villages or dwellings.*

*An object that is normally dedicated to civilian purposes should, in case of doubt, be assumed not to be making an effective contribution to military action, and therefore be treated as a civilian object.*

*[...]*

## 1. Protection of Civilians and Civilian Objects

*The civilian population and individual civilians enjoy general protection against dangers arising from military operations.*

*Civilians lose their special protection and may become military objectives themselves if and for such time as they take a direct part in hostilities."*

In order to give effect to the principle of distinction, members of the German Armed Forces are required to wear uniforms as distinctive signs. For this purpose, the Federal Ministry of Defence issued the Joint Service Regulation A1-2630/0-9804 "Suit Regulations for Military Personnel of the *Bundeswehr*". This regulation determines the official uniform to be worn by the members of the German Armed Forces. Permissible exemptions from the above-mentioned regulation require an individual case assessment and the authorisation of the Federal Ministry of Defence.

The LOAC Manual also contains the rules specifically applicable to air operations (paras. 1118, 1153, 1156 and 1157). In order to translate these rules into practice and safeguard compliance in all types of operations, including high-intensity operations in multinational settings, Germany has approved the NATO regulations on NATO's Joint Targeting Process (JTP) and implemented them as part of its own regulations. This process is the central control and coordination mechanism for the employment of all military assets and modelled closely to comply with Art. 57 AP I in particular. The JTP synchronises and optimises the use of all types of military assets in order to achieve the intended effect, under the precondition to avert damage to uninvolved parties. With the implementation of the JTP through the Joint Service Regulation A-100/12 of 17 April 2018 "National Participation in and National Contribution to the Joint Targeting Process in Multinational Operations" responsibilities and competences that identify the necessary measures and resources for all phases of the process were defined. The mandatory involvement of the Directorate-General for Legal Affairs of the Federal Ministry of Defence and the respective responsible legal advisers in the subordinate area or the legal adviser staff officers deployed abroad ensures that emerging legal concerns are taken into account and addressed at all times.

### b. Protection of the Civilian Population against Indiscriminate Attacks

Related to the principle of distinction, IHL also prohibits indiscriminate attacks. The relevant provision of the LOAC Manual (para. 403, references omitted) states:

#### IV. Implementation Measures

*"The prohibition of indiscriminate attacks contains that neither the civilian population as such nor individual civilians may be the object of attack and that they must be spared as far as possible. Parties to the conflict must direct their attacks only against military targets. To the extent feasible, attacks against military objectives must be conducted with maximum care for the civilian population and individual civilians. Attacks which may affect the civilian population must be preceded by an effective warning, unless circumstances do not permit such a warning. Attacks which do not distinguish between combatants or persons taking a direct part in hostilities and the non-participating civilian population or between civilian objects and military objectives are thus prohibited."*

The manual further references Art. 51 AP I for examples of indiscriminate attacks and categorises indiscriminate attacks to be punishable as war crimes.

#### c. Prohibition of Excessive Civilian Damage or Loss of Civilian Life

Another basic tenet of the protection of civilians is the prohibition of excessive civilian damage or loss of civilian life. Pursuant to IHL, as the LOAC Manual translates it into practice, "attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination of these, which would be excessive in relation to the concrete and direct military advantage anticipated (principle of proportionality)" are prohibited (LOAC Manual, para. 403). This rule has a particularly strong bearing on the choice of means and methods of warfare. As one of the basic rules of IHL, the LOAC Manual stresses that the principle of proportionality as endorsed in the law of armed conflict must be adhered to at all times (para. 404). The manual references the importance of distinguishing the principle of proportionality stemming from IHL from the general principle of proportionality used in German domestic law. For under IHL, a specific assessment has to be made between the concrete and direct military advantage anticipated on the one hand and the expected incidental civilian loss and/or damage on the other.

In accordance with the declaration adopted by the Federal Republic of Germany upon depositing the instrument of ratification of the Additional Protocols, a military advantage is the advantage expected to result from the

entire attack and not from the individual acts that constitute the attack.<sup>9</sup> The relevant perspective concerning the expected damage to civilian objects is that of the military decision maker at the time of the decision. As such, the principle refers to the kind of damage that is the direct and foreseeable result of the attack at the time of the decision.

d. Protection of Schools as Civilian Objects

Different international soft law initiatives highlight the need for specific action to protect civilians in armed conflicts, mainly by reinforcing existing rules of IHL and promulgating the need to implement and comply with existing obligations. One recent example of such an initiative is the “Safe Schools Declaration”, which was included in this report as an example.<sup>10</sup>

Due to the detrimental effect of armed conflicts on education and in particular on schools, universities and the safety of students, on 22 May 2018 Germany – as the 75<sup>th</sup> State – endorsed the “Safe Schools Declaration” and the “Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict” (Lucens Guidelines). The “Safe Schools Declaration” recognises the impact of armed conflicts on education and reaffirms the non-legally binding Lucens Guidelines aimed at reducing the use of schools and universities by parties and minimising the negative impact of armed conflicts on the safety and education of students. In connection with the endorsement of the “Safe Schools Declaration”, the Federal Government emphasised and underlined Germany’s commitment to IHL by issuing an interpretative endorsement declaration. According to this note, Germany’s commitment naturally includes seeking to protect and promote education and it fully supports the underlying goal of the “Safe Schools Declaration”, namely to better protect students, teachers and educational establishments from attack during times of armed conflict.

9 Notification by the Federal Foreign Office of the Entry into Force of Additional Protocols I and II to the Geneva Conventions of 1949, 30 July 1991, German Federal Law Gazette 1991 II, page 968 [https://www.bgbler.de/xaver/bgbler/start.xav?start=%2F%2F%05B%40attr\\_id%3D%27bgbler291s0968.pdf%27%5D%2F%05B%40attr\\_id%3D%27bgbler291s0968.pdf%27%5D\\_1598856446876](https://www.bgbler.de/xaver/bgbler/start.xav?start=%2F%2F%05B%40attr_id%3D%27bgbler291s0968.pdf%27%5D%2F%05B%40attr_id%3D%27bgbler291s0968.pdf%27%5D_1598856446876) (Accessed 31 August 2020).

10 Other soft law initiatives in which Germany is involved have been excluded from this report due to them not being part of IHL.

#### *IV. Implementation Measures*

Germany underlined its commitment to IHL, according to which schools and universities, as civilian objects, enjoy protection against direct attacks and the effects of hostilities as provided for, in particular, in Arts. 48, 51 paras 4 and 5, 52 para. 1, 57 and 58 AP I. As objects that are normally dedicated to civilian purposes, in case of doubt whether they are being used to make an effective contribution to military action, they shall moreover be presumed not to be so used (Art. 52 para. 3 AP I; see also LOAC Manual, para. 409). Deliberate attacks on objects which are not military objectives constitute war crimes, in both international and non-international armed conflicts. Furthermore, Germany stated that it will continue to ensure the protection of schools and universities in full accordance with IHL. For each military operation, consideration will be given as to how to implement the Guidelines in the context of specific missions – making practical recommendations for action – in order to comply with IHL.

## 2. Persons under Specific Protection

### a. Prisoners of War, Internees and Detainees

The LOAC Manual contains basic rules for the protection of prisoners of war and internees, referring primarily to the GC III relative to the Treatment of Prisoners of War (paras 801–851) resp. to the GC IV relative to the Protection of Civilian Persons in Time of War (paras 587–594). It holds that the relationship between LOAC and the international protection of human rights in armed conflicts has not been finally settled. Human rights standards deemed to be applicable in an individual mission will be specified for each mission to ensure legal clarity (para. 105).

Acknowledging the practical and legal questions associated with the treatment of persons deprived of their liberty in military missions, the Federal Ministry of Defence has issued Joint Service Regulation A-130/19, which deals with the “Treatment and Protection of Persons Taken into Custody on Missions Abroad”. This regulation is the key Federal Ministry of Defence publication for the treatment and protection of detainees on missions abroad that do not fall under the legal framework of the IHL applicable to international armed conflicts. The regulation comprises the legal provisions governing the protection and treatment of detained persons and contains principles and best practice standards, setting out guidance for the strategic level as well as fundamental rules and principles that apply at the operational level. The revised regulation refers to the applicable in-

ternational legal instruments, includes i.a. the case law of the European Court of Human Rights and takes note of various international best practices and standard-setting documents. Special Publication C1-130/19-8007 “Execution of Detention Tasks in Missions Abroad” implements Joint Service Regulation A-130/19 and gives guidance on the execution of detention tasks in missions abroad at the operational and tactical level. Both regulations are complemented by General Publication B1-221/0-4 “Training for the Conduct of Detention Tasks outside International Armed Conflicts”, which ensures the training of the service personnel concerned with detention tasks outside international armed conflicts on the basis of those regulations.

Depending on the mandate and the specific nature of a mission, mission-specific regulations will be issued by the Federal Ministry of Defence to ensure that mission-specific legal and operational requirements are met, for example the General Publication B-130/6 “Guidelines for Detention of Persons within the Framework of the EU-led Operation ATALANTA”. All regulations issued are subject to constant review in order to ensure that all international and national legal obligations of the Federal Republic of Germany concerning the treatment and protection of people deprived of their liberty are being met. That includes prisoners of war, internees and other detainees.

To ensure that the minimum standard of treatment applicable to all detained persons in all circumstances is being met, the above-mentioned regulations set out in detail the guarantees under international and domestic law particularly that all persons deprived of their liberty, i.a.

- are to be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria,
- are protected from threats in a way that is equivalent to the protection of German Armed Forces,
- receive basic provisions of an equivalent standard to those normally received by German Armed Forces,
- are deprived of their liberty under adequate conditions, including appropriate food, clothing, housing, access to the open air, hygiene, medical care, due regard for the religious customs and traditions of the detainee and protection from climatic conditions, dangers of military activity and insults, violence, sexual assault and intimidation.

To fully comply with applicable international law and in order to ensure that every detained person can effectively exercise his or her rights and receives the protections he or she is entitled to, the individual legal status of

#### *IV. Implementation Measures*

persons deprived of their freedoms needs to be determined. The recently revised version of the Joint Service Regulation A-130/19 provides a detailed review procedure for all persons deprived of their freedom on missions abroad outside of an international armed conflict, which ensures the timely status-determination in every single case.

##### b. The Wounded, Sick and Shipwrecked as well as the Medical Service

A cornerstone of IHL is the protection of the wounded, sick and the shipwrecked as well as of the medical personnel providing their medical assistance and care. The LOAC Manual refers to the specific rules of the Geneva Conventions and Additional Protocols and outlines the applicable guarantees (LOAC Manual paras 601 et seq.). Chief among them is the basic rule that the wounded, sick and shipwrecked shall be respected and protected in all circumstances and that any attempts upon their lives, or violence to their persons, are prohibited. Reprisals against the wounded, sick and shipwrecked are prohibited. All possible measures shall be taken to collect the wounded, sick and shipwrecked and to ensure their adequate medical assistance (LOAC Manual, paras. 604 et seq.).

In 2002, the *Bundeswehr* restructured its medical services in order to provide for an effective protection of people wounded in armed conflicts and founded the Joint Medical Service as an independent major military organisational element. It is the mission of the *Bundeswehr* Medical Service to protect, maintain and restore the health of military personnel and perform the duties outlined in Chapter 6 (“Protection of the Wounded, Sick and Shipwrecked”) of the LOAC Manual.

Pertinent regulations transpose IHL’s rules on the wearing of the distinctive emblem and identity card into practice. Implementing requirements of IHL, Medical Service Regulation C1-800/0-4016 “Operation of Weapons by the *Bundeswehr* Medical Service” addresses among others the specific issue of weapons permitted for the *Bundeswehr* Medical Service personnel. In order to exercise the right to self-defence in armed conflicts, German medical personnel may be equipped with light individual weapons such as pistols, rifles and machine pistols. Crew served weapons as well as weapons usually used for participation in active combat operations are not permitted. Moreover, weapons may only be used by medical personnel in order to defend themselves, their patients, establishments, material and means of transportation against illegal attack by an adversary.

These rules apply in international and non-international armed conflicts alike.

### c. Civil Protection / Civil Defence Units and Personnel

The term “civil protection” in the sense of the *Basic Law* and the Federal Civil Protection and Disaster Assistance Act (*Gesetz über den Zivilschutz und die Katastrophenhilfe des Bundes* – ZSKG; hereafter: CPDAA) comprises non-military measures to protect the civilian population against the dangers of hostilities, to help it to recover from or mitigate their immediate effects, and to provide the conditions necessary for the survival of the civilian population (cf. Art. 73 para. 1 no. 1 Basic Law and Sec. 1 CPDAA). Sec. 1 para. 2 CPDAA lists self-protection, warning of the population, construction of shelters, regulation on residence, disaster management in the event of an armed conflict, measures for health protection and measures for the protection of cultural property as examples of civil protection tasks. In Germany’s federal system the Federation is in charge of civil protection (Sec. 2 para. 1 CPDAA). In general, the *Länder* execute the CPDAA on federal commission (Art. 85 para. 1 Basic Law), and the Federation may draw on *Länder* resources and provides additional equipment, supplies and training to the *Länder*.

Sec. 3 para. 2 CPDAA highlights that the status of the German Red Cross (GerRC) and the other voluntary aid organisations and their personnel under IHL remains unaffected. According to Sec. 26 para. 1 CPDAA public and civilian civil protection organisations qualified to contribute to the fulfilment of civil protection tasks include, in particular, the Workers’ Samaritan Federation (*Arbeiter-Samariter-Bund* – ASB), the German Life Saving Association (*Deutsche Lebens-Rettungs-Gesellschaft* – DLRG), the GerRC (*Deutsches Rotes Kreuz* – DRK), the *Johanniter-Unfall-Hilfe* (JUH) and the *Malteser Hilfsdienst* (MHD). Sec. 3 para. 1 reiterates that civil protection units, institutions and installations need to conform with the preconditions set out in Art. 63 GC IV and Art. 61 AP I. On that basis, protection for German civil protection units and personnel is provided for within the framework of Art. 63 GC IV and Arts. 62 – 66 AP I.

According to Art. 66 AP I, each party to the conflict shall endeavour to ensure that its civil defence organisations, their personnel, buildings and material are identifiable. To ensure protection, Germany has also ratified the “Regulations concerning identification” in Annex I (to AP I) as amended on 30 November 1993 (Federal Act of 17 July 1997 on the Amendment

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of Annex I to Protocol I Additional to the 1949 Geneva Conventions, Gesetz vom 17. Juli 1997 zur Änderung des Anhangs I des Zusatzprotokolls I zu den Genfer Rotkreuz-Abkommen von 1949). Art. 66 para. 8 AP I demands that the High Contracting Parties take the measures necessary to supervise the display of the international distinctive sign of civil defence and to prevent and repress any misuse thereof. Sec. 125 para. 4 *Act on Regulatory Offences*<sup>11</sup> (*Ordnungswidrigkeitengesetz* – OWiG; hereafter: ARO) defines as a regulatory offence any uses of insignia or designations which according to international law are equivalent to the insignia (i.e. emblems) of the red cross against a white background or to the designation “Red Cross”<sup>12</sup> without authorisation or which may be mistaken for them.

#### d. Religious Personnel Attached to the German Armed Forces

Pursuant to IHL, military chaplains must be respected and protected under all circumstances and at all times, not only when they perform religious functions (LOAC Manual, para. 711 et seq.). While articles used for religious purposes are not explicitly protected by international law, the LOAC Manual refers to them and notes that, in the spirit of the Geneva Conventions, they should be respected and not used for unintended purposes (para. 713).

In Germany, a military chaplaincy with full-time chaplains and special administrative offices has so far been established in the German Armed Forces for the Christian (Catholic and Protestant) and Jewish faiths.<sup>13</sup>

Pursuant to the LOAC Manual, religious personnel in the IHL context means all military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached

- to the armed forces, medical units, medical transports or civil defence organisations of a party to a conflict or

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11 [https://www.gesetze-im-internet.de/englisch\\_owig/](https://www.gesetze-im-internet.de/englisch_owig/) (Accessed 31 August 2020).

12 In accordance with Art. 38 GC I, the red crescent on a white ground as well as the red lion and sun on a white ground (the latter currently not in use) are also recognised by the terms of the Convention. AP III recognises a red frame in the shape of a square on edge on a white ground – referred to as the red crystal – as an additional emblem.

13 The term “chaplain” is today interpreted broadly as not confined to religious personnel of the Christian faith (as the official German translation of “Feldgeistlicher” already implies, see e.g. Art. 24 GC I).

- to medical units or medical transports of neutral States, aid societies of neutral States, or international humanitarian organisations (LOAC Manual, para. 701).

While, according to IHL, religious personnel may be military or non-military personnel, in the Federal Republic of Germany, religious personnel are not soldiers. They are thus not members of the armed forces in terms of the law of armed conflict (LOAC Manual, para. 701). Although chaplains do not lose their protection under international law if they are armed and use arms only for self-defence or in respect of the wounded, sick and shipwrecked against attacks in violation of international law, in Germany, chaplains are as a matter of principle not armed.

### 3. Relief Actions / Humanitarian Assistance

The IHL rules governing relief actions and humanitarian assistance, in particular Arts. 70 and 71 AP I as well as customary international law, prescribe the legal framework for humanitarian assistance in the context of armed conflicts. General Assembly Resolutions 48/182 (1991) and 58/114 (2004) define the humanitarian principles of humanity, neutrality, impartiality and independence for humanitarian assistance in general. Germany strictly implements this normative framework and applies it in its humanitarian assistance. The Federal Foreign Office explicitly reiterates in its Strategy for Humanitarian Assistance Abroad 2019 to 2023 that it

*“is committed to the humanitarian principles and on this basis contributes to the advancement of the international humanitarian system”* and that *“[U]pholding the humanitarian principles of Humanity, Impartiality, Neutrality and Independence is a key prerequisite for humanitarian assistance”*.<sup>14</sup>

The humanitarian principles were confirmed by the Federal Constitutional Court in 2018, when its First Senate ruled on the prohibition of an association that was accused of having indirectly supported a terrorist organisa-

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<sup>14</sup> <https://www.auswaertiges-amt.de/blob/282228/3cf87de36f30bb61eed542249997631/strategie-huhi-englisch-data.pdf> (Accessed 31 August 2020); cf. also the Strategy of the Federal Foreign Office for Humanitarian Assistance Abroad 2012, <https://www.auswaertiges-amt.de/blob/252958/a6a692e0402f38c966178a95caf6c688/121115-aa-strategie-humanitaere-hilfe-data.pdf> (Accessed 31 August 2020).

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tion by channelling donations to that organisation.<sup>15</sup> The Court states in its decision, in particular, that:

*"In this respect, the prohibition of an association pursuant to Art. 9(2) GG may not serve to prohibit humanitarian actions that are permissible under international law. [...] The[se] rules allow a distinction between permissible humanitarian aid from aid that violates the concept of international understanding within the meaning of Art. 9(2) GG. [...]. When an association makes donations with the intention to alleviate suffering, and when it observes the general principles of humanity, neutrality and impartiality, it does not meet the prohibition requirement under Art. 9(2) GG."<sup>16</sup>*

Furthermore, principled humanitarian action does not constitute an offence under German criminal law on terrorism, including under Directive 2017/541/EU of 15 March 2017. Despite the fact that EU legislators decided not to include an explicit exemption under the criminal law on terrorism for humanitarian organisations, certain concerns were recognised, addressed and confirmed in Recital 38 of the Directive as follows:

*"The provision of humanitarian activities by impartial humanitarian organisations recognised by international law, including international humanitarian law, do not fall within the scope of this Directive, [...]"*

Apart from these considerations, it is the German understanding that there is no need to transpose the Directive on combating terrorism into German domestic law, as the Federal Government notified to the EU Commission in September 2018, given that relevant regulations are already fully incorporated into German legislation.

This includes a ban on forming a terrorist organisation under Sec. 129 a (in conjunction with Sec. 129 b para. 1) of the Criminal Code (*Strafgesetzbuch*), which also applies to the financing of a terrorist organisation (punishable offence for both members and non-members of such an organisation), and the offence of terrorist financing under Sec. 89 c para. 1 of the Criminal Code. Moreover, providing assets to persons and organisations included in the EU's and the UN's lists of sanctions is a punishable offence under the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*).

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<sup>15</sup> BVerfG (Federal Constitutional Court), Order of the First Senate of 13 July 2018 – 1 BvR 1474/12, para. 137, English translation available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/07/rs20180713\\_1bvr147412en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/07/rs20180713_1bvr147412en.html) (Accessed 31 August 2020).

<sup>16</sup> Ibid., paras. 133 and 137.

Under German criminal law, the performance by humanitarian organisations providing principled humanitarian action does not constitute an offence under German criminal law on terrorism. It would generally lack – at least – the subjective element (*mens rea*) for such crimes. The offence of terrorist financing under Sec. 89 c para. 1 of the Criminal Code requires, with regard to the financing of another person's acts, the knowledge or intention that the funds are to be used to commit terrorist offences. Whereas Sec. 129 a of the Criminal Code only requires conditional intent, thus, the offender must be aware or at least believe that it is possible and accept that its financial support will benefit a terrorist organisation. However, this test is generally not met when due care is taken, e.g. when selecting local contracting partners and monitoring the use of funds, including by making use of the UN's and the EU's lists of sanctions in relation to terrorism which are in the public domain. The same applies to a violation of the ban on the provision of financial assets under Sec. 18 of the Foreign Trade and Payments Act, as the act must be intentional in this case as well.

Furthermore, EU regulations concerning embargos also often exempt organisations from criminal liability either with regard to the Foreign Trade and Payments Act and the support of terrorism or provide a justification for their actions.

#### 4. Protection of Cultural Property

The protection of cultural property is one aspect of the protection of civilian objects and of civil protection / civil defence in Germany (Sec. 1 para. 2 no. 7 CPDAA). Regarding measures for the protection of cultural property, Sec. 25 CPDAA refers to the legislation that implements the 1954 Hague Convention in domestic law. The Protocol of 1954 to the Hague Convention is implemented by the Cultural Property Protection Act of 2016 (*Gesetz zum Schutz von Kulturgut – KGSG*).<sup>17</sup>

Despite the exclusive legislative and executive powers of the *Länder* in the field of cultural matters, the responsibility regarding the protection of cultural property in the event of an armed conflict, to the extent that it constitutes a matter of civil defence, is assigned to the Federal Ministry of

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<sup>17</sup> German Federal Law Gazette 2016 I, page 1914, [https://www.bgblerichterstattung.de/xaver/bgblerichterstattung?startbk=Bundesanzeiger\\_BGBI&start=/%5B@attr\\_id=%2527bgblerichterstattung116s1914.pdf%2527%5D#\\_bgblerichterstattung%2F%5B%40attr\\_id%3D%27bgblerichterstattung116s1914.pdf%2527%5D\\_\\_1595864062702](https://www.bgblerichterstattung.de/xaver/bgblerichterstattung?startbk=Bundesanzeiger_BGBI&start=/%5B@attr_id=%2527bgblerichterstattung116s1914.pdf%2527%5D#_bgblerichterstattung%2F%5B%40attr_id%3D%27bgblerichterstattung116s1914.pdf%2527%5D__1595864062702) (Accessed 31 August 2020).

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the Interior, Building and Community<sup>18</sup> in general and to the Federal Office of Civil Protection and Disaster Assistance (*Bundesamt für Bevölkerungsschutz und Katastrophenhilfe*) in particular. The Office is specifically responsible for the packaging, documentation and storage of secured microfiche at the Central Refuge of the Federal Republic of Germany.

In general, cultural property should be marked with the distinctive emblem according to Arts. 16 and 17 of the 1954 Hague Convention (see also LOAC Manual, para. 939). A detailed report on the national implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols (1954 and 1999) by Germany is contained in its reply submitted on 16 September 2013 to UNESCO.<sup>19</sup> In Sec. I:3.4–I:3.5 of this report, the Federal Government stated:

*“From the Federal Government’s perspective, use of the emblem would make the cultural property bearing it recognizable as such, thus ensuring transparency for the general public and for potential parties to an armed conflict. Furthermore, it would help foster general awareness of the value of, and the need to, protect the objects bearing the emblem (mandate from the 1999 Second Protocol). On the other hand, this recognizability could pose risks particularly in the event of an armed conflict. Use of the emblem could put cultural property at greater risk if it then becomes a deliberate target. In view of this, several Länder, including Hamburg and Brandenburg, have deliberately decided against using the emblem. Hesse and Rhineland-Palatinate also have reservations, not least due to recent incidents (in Mostar, Dubrovnik, Afghanistan, Mali), which they believe justify their skepticism. The Association of Regional Monument Conservationists in the Federal Republic of Germany [Vereinigung der Landesdenkmalpfleger] shares this view, as it informed the Federal Government in February 2013.”*

The Federal Government Commissioner for Culture and the Media has published a central database of movable “cultural property of national significance” in Germany registered by the *Länder*.<sup>20</sup> The Federal Ministry of Defence is regularly being provided with a list which includes the recorded

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18 [https://www.bbk.bund.de/EN/FederalOffice/Abouttheoffice/abouttheoffice\\_node.html](https://www.bbk.bund.de/EN/FederalOffice/Abouttheoffice/abouttheoffice_node.html) (Accessed 31 August 2020).

19 See National Implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and Its two (1954 and 1999) Protocols – Reply Submitted [to UNESCO] by the Federal Republic of Germany 2013–09–16”.

20 [http://www.kulturgutschutz-deutschland.de/DE/3\\_Datenbank/dbgeschuetzterkulturgueter\\_node.html](http://www.kulturgutschutz-deutschland.de/DE/3_Datenbank/dbgeschuetzterkulturgueter_node.html) (in German) (Accessed 31 August 2020).

immovable cultural property on its maps; these are available to all military units upon request.

## 5. Protection of the Environment

The rules of the LOAC Manual with regard to the protection of the natural environment are primarily based on Art. 35 para. 3 and Art. 55 para. 1 AP I and the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD Convention). According to Art. 35 para. 3 and Art. 55 AP I, it is prohibited to employ methods or means of warfare which are intended or may be expected, to cause “widespread, long-term and severe damage” to the natural environment. Such damage to the natural environment significantly exceeds normal combat damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. (LOAC Manual para. 435). For reference, the LOAC Manual refers to legally non-binding interpretative declarations that were adopted regarding these terms in, and for the purposes of, the ENMOD Convention to define their threshold. Thereafter, ‘widespread’ means an area of several hundred square kilometres, ‘long-lasting’ means lasting some months or approximately one season, and ‘severe’ means a serious or significant disruption of, or damage to, human lives, natural and economic resources or other goods (para. 436). The LOAC Manual additionally provides that means and methods of warfare must be used with due consideration of environmental aspects (para. 434).

German environmental protection laws and regulations – primarily – apply within the territory of the Federal Republic of Germany. Nevertheless, Germany may apply environmental protection provisions abroad as a matter of policy, providing that this is in accordance with international or local law. The applicable internal guidelines are collated in Joint Service Regulation A-2030/3 "Environment Protection and Management". A policy of best possible protection of personnel and the highest level of environmental damage control is the basic guideline for all missions of the Armed Forces.

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##### 6. Tracing Missing Persons and the Reunification of Families

Family unity is a fundamental principle of IHL and includes learning about the fate of family members gone missing. The GerRC Tracing Service supports people who have become separated from their families due to armed conflicts, disasters, re-settlement, expulsion or migration, not knowing where their relatives are or wishing to live together again in one country. Every year, tens of thousands of people turn to the GerRC Tracing Service. Even more than 75 years after it ended, many of the enquiries concern the whereabouts of people with whom contact was lost during the Second World War.

In its present structure since 1945, the GerRC Tracing Service has been performing these services within the GerRC with a humanitarian mandate based on:

1. Arts. 16, 17 GC I, Art. 19 GC II, Arts. 122, 124 GC III, Arts. 25, 26, 136–139, 141 GC IV and Arts. 33 and 74 AP I,
2. Art. 5 para. 2 lit. e of the Statute of the Movement of Red Cross and Red Crescent Societies and Art. 4 lit. e of the Statute of the International Committee of the Red Cross,
3. Sec. 2 para. 1 no. 3 and 4 GerRC Act,
4. the National Statutes of the GerRC
5. the Tracing Service Agreement between the Federal Ministry of the Interior, Building and Community and the GRC, renewed in December 2018.

The work of the GerRC Tracing Service is institutionally funded by the Federal Republic of Germany. In 1966, the GerRC was entrusted by the German Federal Ministry of Interior with the planning, preparation and discharge of a National Information Bureau (NIB) in the Federal Republic of Germany in accordance with Art. 122 GC III and Art. 136 GC IV, which in turn transferred this task to the Tracing Service. The centrally organised NIB has the task, in the event of an armed conflict, of collecting information on prisoners of war and civil internees of the opposing party and of forwarding this information to the Central Tracing Service of the ICRC and to the NIB of the opposing party to the conflict and of receiving corresponding information.

## 7. Means and Methods of Warfare

The LOAC Manual (paras. 401, 437 – 490 et seqq.) also transcribes the fundamental IHL norms on “means and methods of warfare” stating that the right of the parties to an armed conflict to choose means and methods of warfare is not unlimited. It is particularly prohibited “to employ means or methods which are intended or are of a nature or may be expected to cause

- superfluous injury or unnecessary suffering
- damage indiscriminately to military objectives and civilians or civilian objects or
- widespread, long-term and severe damage to the natural environment.” (para. 401).

This chapter of the LOAC Manual also includes rules concerning weapons review (para. 405 and below IV. 7. b).

### a. Prohibitions and Restriction of the Use of Specific Weapons

Germany has signed and ratified all major conventions currently in force<sup>21</sup> which prohibit or restrict the use of certain weapons, including the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW Convention) and its Protocols, the Conventions on chemical and biological weapons, as well as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, also known as the Ottawa Convention or Mine Ban Treaty (MBT) and the Convention on Cluster Munitions (CCM), also known as the Oslo Convention.<sup>22</sup>

#### i. Chemical Weapons

Germany has implemented the Chemical Weapons Convention (CWC) in national legislation by the Federal Act on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 2 August 1994 and the corresponding regulation of 20 November 1996 as amended (last

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21 Date of publication: September 2020.

22 See Annex 1: List of treaties signed and ratified by Germany.

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update with regard to amendments to schedule 1 chemicals as of 6 July 2020). The use of chemical weapons (Art. I (1) b) CWC) and of riot control agents as a method of warfare (Art. I (5) CWC)<sup>23</sup> is thus prohibited.

Even before the Chemical Weapons Convention entered into force in 1997, the Federal Republic of Germany had refrained from producing chemical weapons on its territory (LOAC Manual para. 466 and seq. with reference to Article I Protocol No. III annexed to the Brussels Treaty 1954). Violations of bans concerning chemical weapons in Germany are punishable under the War Weapons Control Act (*Kriegswaffenkontrollgesetz*, hereafter: WWCA). Employing chemical weapons, especially asphyxiating, poisonous or other gases and all analogous liquids, materials or devices, is punishable as a war crime under the Code of Crimes Against International Law (Völkerstrafgesetzbuch, hereafter: CCAIL; in concreto Sec. 12 para 1 no. 2 CCAIL).

Even though the stockpiles of old chemical weapons had been destroyed by 2007, chemical ammunition from before 1946 is still being found and recovered in Germany. All newly discovered items are duly notified to the OPCW and promptly destroyed.

##### *ii. Biological Weapons*

Germany has implemented the Biological and Toxin Weapons Convention (BWC) in national legislation by the Federal Law on the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 21 February 1983. Germany views the prohibition of the use of biological weapons as a part of customary international law (LOAC Manual, para. 474). The WWCA penalises violations of bans on biological weapons, see section 20 para. 1 WWCA. Employing biological weapons is punishable as a war crime under Sec. 12 para 1 no. 2 CCAIL.

In August 2016, Germany hosted a Peer Review Compliance Visit to the *Bundeswehr* Institute of Microbiology, thereby opening new grounds for promoting transparency in two respects: by opening a BWC-relevant military facility to all BWC members, Germany has set a high standard both in

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<sup>23</sup> Concerning riot control agents, the LOAC Manual (para. 470) spells out that the use of irritants in armed conflicts to fight the adversary is prohibited. On the other hand, the CWC allows the use of such irritants for law enforcement purposes including domestic riot control purposes.

promoting transparency and in building confidence. The Federal Ministry of Defence has thus made a significant contribution to the Federal Government's practical policy of non-proliferation. Furthermore, the visit has demonstrated the possibility to reconcile openness and transparency on the one hand with military security requirements on the other. Germany supports other States Parties to the BWC in preparing and conducting similar measures, for example in 2018 at the Richard Lugar Center for Public Health Research in Tbilisi, Georgia.

### iii. Certain Conventional Weapons

Germany has implemented the Convention on Certain Conventional Weapons (CCW) by federal legislation in 1992 and 2004, with the latter extending the scope of the convention to non-international armed conflicts. The protocols I to V were implemented by federal laws in 1992 (Protocol I, III), 1997 (Protocol II, IV) and 2005 (Protocol V) respectively.

Due to its universal acceptance, the CCW is at the heart of Germany's diplomatic efforts to strengthen further arms control and disarmament initiatives. Thus, Germany has been particularly active in the field of preventive measures such as weapons and ammunition management as well as physical security and stockpile management (PSSM) by providing worldwide financial and specialist assistance to relevant projects and training efforts with the aim of "minimizing the occurrence of explosive remnants of war" in line with Protocol V on Explosive Remnants of War (ERW).

The potential challenges for compliance and respect for IHL posed by emerging technologies in the area of *Lethal Autonomous Weapon Systems* (LAWS) is another topic of specific interest. Germany, together with other states, in particular France, actively supports the work of the *Group of Governmental Experts* (GGE) on LAWS established in 2016. By facilitating the diplomatic process, hosting and sponsoring events such as the virtual Berlin LAWS Forum in April 2020 and submitting various official working papers outlining Germany's position on this topic, Germany actively contributed to the elaboration of the eleven guiding principles on LAWS agreed within the GGE in 2019. These principles confirm and operationalise *inter alia* the unconditional applicability of IHL to LAWS.

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##### iv. Mines

Germany has implemented the Ottawa Convention (MBT) in national legislation through the Act of 30 April 1998 on the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. As early as December 1997, Germany was one of the first states worldwide to complete the environmentally compliant destruction of its stockpiled anti-personnel mines. In this process, more than 2.1 million APM were destroyed, including the stockpiles of the former National People's Army (*Nationale Volksarmee – NVA*) of the former German Democratic Republic (approx. 480,000), of the then Federal Ministry of the Interior (5,400) and of the German Armed Forces (approx. 1.7 million). Hence, Germany had already fulfilled the central obligation before the MBT entered into force on 1 March 1999. As of 31 December 2018, Germany held 583 anti-personnel mines retained for the development of and training in mine detection and mine clearance, as permitted by the MBT.

##### v. Cluster Munitions

Germany has implemented the Oslo Convention through the Act of 6 June 2009 on the Oslo Convention on Cluster Munitions. The significant stockpiles held by the German Armed Forces at the time of signature (about 43 million submunitions) became subject to destruction by 30 July 2018. In fact, the German Armed Forces' stockpiles of these munitions had been destroyed by late 2015, i.e. about three years before this deadline. The German Armed Forces still retain small amounts of cluster munitions for purposes permitted under the Convention, the development of and training in clearance techniques. These holdings are being reduced steadily in the course of training for the destruction of cluster munitions and explosives ordnance disposal.

##### vi. Explosive Weapons in Populated Areas

Germany is gravely concerned by the humanitarian harm being caused during active hostilities, often due to a lack of compliance with or ineffective implementation of IHL when it comes to the use of explosive weapons in populated areas (EWIPA). Therefore, the international community

needs to achieve a more effective implementation of IHL in order to further improve the protection of civilians. Germany participated in the Vienna conference on “Protecting Civilians in Urban Warfare”; the vast majority of the 133 participating States signalled their support for a political declaration that focuses on improving the protection of civilians with respect to the use of explosive weapons in populated areas. Germany actively promotes the approach to strengthen compliance with existing rules of international humanitarian law through the development and sharing of military good practices. Germany would see merit in a declaration that proposes concrete measures and mechanisms for enhancing and spreading the exchange of good practices. These measures should also include the strengthening of data collection and appropriate training capacities to disseminate the good practices to be agreed upon in the political declaration, as well as adequate mechanisms to fund the above-mentioned activities.

#### vii. Cyber Weapons and Means of Warfare

During the last decades, information and communication technologies have come to play a pivotal role in the military domain and have led to new means and strategies of warfare. International law applies to cyberspace, as most recently confirmed by General Assembly Resolution A/RES/70/237. This includes the application of IHL. Thus, Germany considers IHL to be fully applicable to cyber operations that form part of armed conflicts. It furthermore is of the view that IHL fulfils a core function in regulating the use of cyber technology as a means of warfare and in limiting the effects of armed conflict in this regard. In view of the special characteristics of cyberspace such as the worldwide interconnectedness of networks and the ensuing vulnerabilities of and security risks for users of cyber infrastructures, the discussions on the precise modalities of how international law, including IHL, applies in cyberspace, are still ongoing. Germany is actively engaged in these discussions and is working to strengthen the role of international law, including IHL, in the cyber context. Relevant fora are, *inter alia*, the United Nations’ Group of Governmental Experts on advancing responsible State behaviour in cyberspace in the context of international security, the Group of Governmental Experts on developments in the field of information and telecommunications in the context of international security and the United Nations’ Open-ended Working Group on developments in the field of information and telecommunications in the context of international security (OEWG).

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##### **b. Weapon Reviews**

Under the provisions of Art. 36 AP I, all contracting parties are obliged, when studying, developing, acquiring or adopting a new weapon, means or method of warfare, to determine whether its employment would, in some or all circumstances of employment, be prohibited by AP I or by any other rule of international law.

In March 2015, under the auspices of the Federal Ministry of Defence's Directorate-General for Legal Affairs, an independent "Steering body for the legal review of new weapons and methods of warfare" was established within the Federal Ministry of Defence. It is composed of representatives of the Directorate-General for Legal Affairs, as well as of all competent entities at the Ministry that serve as points of contact, such as the Directorates-General for Equipment, Strategy and Operations, Forces Policy, Security and Defence Policy and Planning. The competent entities are meant to provide additional expertise, as well as initiate legal reviews of new weapon systems. The Joint Service Regulation A-2146/1 "Examination of new Weapons, Means and Methods of Warfare" stipulates the central provisions for the procedures.

The question of whether or not a new weapon or method of warfare can and should be introduced is ultimately determined based on the respective legal provisions, and on whether or not a sufficient number of scenarios can be imagined for legally permissible and useful employment of this weapon in actual military operations. This standard demonstrates that the legal review of a new weapon must be performed based not only on legal expertise, supported by technical and medical opinions and assessments, but must also take military and operational analyses into account. The large amount of information that needs to be exchanged across various areas of expertise was a compelling argument for the establishment of a formal review body within the Federal Ministry of Defence.

#### **8. German Red Cross and other Voluntary Aid Societies – Recognition and Status**

Following World War II, the German Red Cross of the Federal Republic of Germany was recognised as the National Red Cross Society on the territory of the Federal Republic of Germany and voluntary aid society, auxiliary to the German authorities in the humanitarian field, on 26 February

1951.<sup>24</sup> The German Red Cross of the German Democratic Republic was created by decree on 23 October 1952.<sup>25</sup> After German reunification, recognition of the GerRC was confirmed by a declaration of the Federal Chancellor on 6 March 1991<sup>26</sup> and reaffirmed in form of a formal act of Parliament (GerRC Act) in December 2008 which states in Sec. 1: “The “Deutsches Rotes Kreuz e.V.” (German Red Cross e.V.) is the National Red Cross Society on the territory of the Federal Republic of Germany and Voluntary Aid Society, auxiliary to the German authorities in the humanitarian field”.

As voluntary aid society, the GerRC assumes the tasks that arise from the GC and their AP, in particular

1. rendering assistance to the regular medical service of the German Armed Forces as defined in Art. 26 GC I, including the utilisation of hospital ships pursuant to Art. 24 GC II;
2. the dissemination of knowledge of IHL 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;
3. the assumption of the tasks of an official Information Bureau pursuant to Art. 122 GC III and pursuant to Art. 136 GC IV;
4. the conveyance of correspondence under the preconditions stipulated by Art. 25 para. 2 GC IV and the provision of tracing services according to Art. 26 GC IV and Art. 33 para. 3 as well as Art. 74 AP I.

In addition, the *Johanniter-Unfall-Hilfe e.V.* and the *Malteser Hilfsdienst e.V.* are voluntary aid societies as defined in Art. 26 GC I.<sup>27</sup>

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24 Letter from Federal Chancellor Konrad Adenauer of 26 February 1951.

25 Decree (“Erste) Verordnung über die Bildung der Organisation „Deutsches Rotes Kreuz“) of 23 October 1952 (GBI. p. 1090).

26 Letter from Federal Chancellor Helmut Kohl of 6 March 1991.

27 The Johanniter-Unfall-Hilfe e. V. was recognised by letter from Federal Chancellor Konrad Adenauer of March 1963. After German reunification, the recognition was confirmed by letter from Federal Chancellor Helmut Kohl of 18 October 1991.

The Malteser Hilfsdienst e.V. was recognised by letter from Federal Chancellor Konrad Adenauer of 28 June 1962 and, which was confirmed after German reunification by letter from Federal Chancellor Helmut Kohl of 25 November 1991.



## 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

## *V. Dissemination and Education*

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' multi-national 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,<sup>28</sup> 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.

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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.

## 2. Dissemination and Education by the German Red Cross

Within the German Armed Forces, the Manual was newly issued in May 2013 and is now available to the armed forces in the 3<sup>rd</sup> 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".*

## *2. Dissemination and Education by the German Red Cross*

### 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 IHL<sup>29</sup> 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)<sup>30</sup> 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 1973<sup>31</sup>. 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

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29 The current and past newsletters can be found here: [www.drk.de/newsletter-va](http://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.<sup>32</sup>

### **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

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32 See V. 1. c.

well as events related to the 70<sup>th</sup> 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.

## VI. Enforcement of IHL

### 1. Internal System to Monitor Observance of IHL by the German Armed Forces and Command Responsibility

Within the German Armed Forces, a superior has to ensure that subordinates are aware of their duties and rights under IHL. The superior is supported in these tasks by legal advisers. The superior is obliged to prevent and, where necessary, to suppress, or to report to competent authorities, breaches of IHL and relevant international law. A superior is criminally responsible for the violation of these obligations, especially in case of an armed conflict (paras. 150, 153 – 155, 1506 LOAC Manual).

When a disciplinary superior learns (e.g. by reports, own observation, complaints etc.) of incidents giving rise to the suspicion that IHL has been violated by subordinates, the superior has to ascertain the facts and examine whether disciplinary measures are to be taken. If the disciplinary offence constitutes a criminal offence, the superior is obliged to transfer the case to the appropriate prosecution authority when criminal prosecution is called for (para. 1525 LOAC Manual). Legal advisers have immediate access to the commanding officer and the right to report directly (para. 154 LOAC Manual). In a case of a severe disciplinary offence (including breaches of international law), the Disciplinary Attorney for the German Armed Forces conducts the investigation and brings the charge before the military disciplinary court (para. 155 LOAC Manual).

Pursuant to Sec. 33 German Military Penal Code<sup>33</sup> (*Wehrstrafgesetz* – WStG; hereafter: GMPC), punishment is imposed on anyone who in abuse of his or her command responsibility or official position has ordered a subordinate to commit an unlawful act, which is then committed by the latter. Unsuccessful incitement to commit an unlawful act is also punishable in accordance with Sec. 34 GMPC. Sections 4 and 14 CCAIL follow the same conceptual direction (see annex). While the GMPC is a specific military criminal law, this law is also administered by the ordinary civilian public prosecutor.

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<sup>33</sup> <https://www.gesetze-im-internet.de/wstrg/index.html> (in German) (Accessed 31 August 2020).

## 2. Securing Enforcement through Disciplinary Action

The elementary duties of all civil servants include loyalty to the Constitution. The executive as such is bound by law and justice (Art. 20 para. 3 Basic Law). An essential part of this loyalty to the constitution is respect for human rights, which are guaranteed by the Basic Law. Furthermore, insofar as IHL is part of German law on the basis of either Art. 59 para. 2 or Art. 25 Basic Law, all public servants are obliged to adhere to it. This also applies to every individual soldier. Thus, a breach of this law constitutes a breach of official duties.

Respecting IHL also constitutes part of the official duties enshrined in the catalogue of soldier's duties and rights in Sec. 6 – 36 Soldiers Act. Sec. 10 para. 4 stipulates that a superior may give orders only for official purposes and only in conformity with the rules of international law, the laws, and the service regulations. The corresponding rule for subordinates (Sec. 11 paras. 1 and 2) forbids obeying an order which would lead to a violation of human dignity or a criminal offence. This includes the prohibition to obey orders constituting grave breaches of IHL. According to Sec. 23 para. 1 Soldiers Act, any violation committed culpably by soldiers constitutes a breach of duty.

According to Sec. 15 para. 1 Military Discipline Code<sup>34</sup> (*Wehrdisziplinarordnung* – WDO; hereafter: MDC) breaches of duty (Sec. 23 Soldiers Act) may be sanctioned – if committed with intent and knowledge or by negligence – by simple disciplinary measures (*einfache Disziplinarmaßnahmen*) ordered by the disciplinary superior (Sec. 22 MDC) or by judicial disciplinary measures (*gerichtliche Disziplinarmaßnahmen*), ordered by an German Armed Forces Disciplinary and Complaints Courts (*Truppendifenstgericht* – Sec. 68 et seqq. MDC), and the Federal Administrative Court (Sec. 68, 80 MDC). Simple disciplinary measures are defined in Sec. 22 et seqq. MDC, disciplinary measures in Sec. 58 et seqq. MDC.

In the German military legal system, there are no military courts as such. Instead, on the basis of the authority provided for in Art. 96 para. 4 Basic Law, federal courts have been established for service members of the German Armed Forces to decide on disciplinary and complaint proceedings. These courts are referred to as military service courts. Military service courts do not have any punitive powers. Service members who have committed a criminal offence will primarily face trial before a criminal court

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<sup>34</sup> [https://www.gesetze-im-internet.de/wdo\\_2002/index.html](https://www.gesetze-im-internet.de/wdo_2002/index.html) (in German) (Accessed 31 August 2020).

that is part of the ordinary judiciary. However, in such cases a parallel disciplinary proceeding will regularly be held.

Military service courts are the German Armed Forces Disciplinary and Complaints Courts and the Federal Administrative Court (*Bundesverwaltungsgericht*). These courts are independent in the exercise of their judicial functions.<sup>35</sup> At the German Armed Forces Disciplinary and Complaints Courts full-time judges are joined by service members as honorary judges. The judges who preside in the Disciplinary and Complaints Courts do not carry military ranks and are selected from experienced and qualified legal advisers. At the Federal Administrative Court, the bench comprises of three civilian federal judges and two soldiers, with a civilian federal judge presiding. The military disciplinary attorneys are subject to the Disciplinary Attorney General for the German Armed Forces (*Bundeswehrdisziplinaranwalt*). In proceedings before the Military Affairs Division of the Federal Administrative Court, the commanding officers and the Federal Ministry of Defence are represented by him/ her.

### 3. Securing Enforcement through Criminal Law

In Germany, the use of military force abroad and other actions of the German Armed Forces are not exempt from national criminal law. While IHL-compliant use of force by members of the armed forces is not punishable by law, the use of force in violation of IHL will result in criminal proceedings. Generally, the public prosecution office is obliged to take action in relation to all prosecutable criminal offences if there are sufficient factual indications (c.f. Sec. 152 para. 2 German Code of Criminal Procedure (*Strafprozessordnung*)).<sup>36</sup> With regard to criminal offences pursuant to the Code of Crimes against International Law, in particular war crimes, the Federal Prosecutor General shall discharge the duties of the public prosecution office pursuant Art. 96 para 5 no. 3 Basic Law, Sec. 120 para. 1 no. 8 and Sec. 142 a para.1 Courts Constitution Act (*Gerichtsverfassungsgesetz – GVG*, hereafter: CCA). This applies also to the use of force by German soldiers to which German criminal law may apply according to Sec. 3 and Sec. 7 of the German Criminal Code, Sec. 1 a GMPC, Sec. 1 CCAIL. It also

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<sup>35</sup> The military jurisdiction is an independent jurisdiction as defined in Art. 20 para.3, Art. 92 et seq. of the Basic Law. Accordingly, all judges are independent and subject solely to the law.

<sup>36</sup> [https://www.gesetze-im-internet.de/englisch\\_stpo/](https://www.gesetze-im-internet.de/englisch_stpo/) (Accessed 31 August 2020).

## VI. Enforcement of IHL

applies to the use of force against German nationals, to which German criminal law may apply according to section 7 para. 1 of the German Criminal Code, Sec. 1 CCAIL.

### 4. Securing Enforcement through the Rome Statute and the Code of Crimes against International Law (CCAIL)

The Statute of the International Criminal Court, which was adopted in Rome on 17 July 1998 and entered into force on 1 July 2002, was passed into German law on 4 December 2000. In order to allow extraditions of German nationals to the Court and thus give full effect to the system of international criminal justice, Germany amended Art. 16 of the Basic Law.

On 21 June 2002, the *Bundestag* adopted the Law on Cooperation with the International Criminal Court<sup>37</sup> (*Gesetz über Zusammenarbeit mit dem Internationalen Strafgerichtshof – IStGH-Gesetz*). Its provisions refer, in particular, to the cooperation between German authorities and the ICC, the extradition of persons to the ICC, the execution of ICC decisions, legal assistance to the ICC and its Office of the Prosecutor and the permission of procedural measures by ICC authorities on German territory.

On 26 June 2002 the *Bundestag* furthermore, adopted the CCAIL.<sup>38</sup> The CCAIL does not copy verbatim the provisions of the Rome Statute but establishes equivalent provisions satisfying German constitutional law requirements with respect to legal clarity and certainty. Although there is always the risk that such autonomous definitions, inadvertently, are not exactly congruous to the international norms, this difficulty can be overcome by an interpretation which takes due account of corresponding international norms and jurisprudence. In 2017, the Crime of Aggression was implemented into the CCAIL as Sec. 13 by the *Bundestag*.<sup>39</sup> Germany avails itself of the complementarity principle allowing for full jurisdiction of crimes punishable under the Rome Statute.<sup>40</sup> Since the adoption of the

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<sup>37</sup> Law on Cooperation with the International Criminal Court promulgated on 21 June 2002 (Federal Law Gazette 2002 I, at pp. 2144), last amended by Art. 13 of the Law of 17 August 2017 (Federal Law Gazette 2017 I, at pp. 3202), <https://www.gesetze-im-internet.de/istghg/> (in German) (Accessed 31 August 2020).

<sup>38</sup> See Annex 2.

<sup>39</sup> <http://dipbt.bundestag.de/extrakt/ba/WP18/734/73417.html> (in German) (Accessed 31 August 2020).

<sup>40</sup> The ICC shall be complementary to national criminal jurisdiction (principle of complementarity according to Art. 17 para. 1 Rome Statute).

## *5. Entitlement of an Individual Victim to claim Compensation and Civil Proceedings*

CCAIL in 2002, more than 20 public charges for war crimes (Sec. 8 – 12 CCAIL) have been preferred in Germany and about 15 convictions delivered. In addition, war crimes have also been convicted within the framework of criminal proceedings under the offences of forming criminal organisations and foreign criminal and terrorist organisations (Sec. 129 a, 129 b GCC). Germany has further codified the principle of universal jurisdiction with respect to genocide, crimes against humanity and war crimes (Sec. 6 to 12 CCAIL). Sec. 1 CCAIL stipulates that this Act shall apply to these offences even when the offence was committed abroad and bears no relation to Germany. For crimes of aggression that were committed abroad, this Act shall apply independently of the law of the place where the act was committed if the perpetrator is German or if the offence is directed against Germany.

### **5. Entitlement of an Individual Victim of IHL Violations to claim Compensation and Civil Proceedings**

Germany has no specific legislative provisions governing compensation for violations of IHL.<sup>41</sup> Court decisions have dealt with individual compensation claims. This has been the case for war crimes committed during the Second World War on the one hand. It has also been the case for alleged violations of IHL in recent military operations conducted by the German Armed Forces on the other hand. German Courts have held the following: The Federal Court of Justice<sup>42</sup> and the Federal Constitutional Court<sup>43</sup> held

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41 A number of foreign and domestic court decisions have addressed the question of a German obligation to pay reparations due to violations of international humanitarian law committed by Germany during the Second World War. In 2008, Germany filed an application instituting proceedings before the International Court of Justice (ICJ), arguing that national judicial bodies disregarded the jurisdictional immunity of Germany as a sovereign State, thus violating international law. The ICJ decided on an infringement of Germany's jurisdictional immunity; it did not decide on the question of a duty to pay reparations.

42 BGH (Federal Court of Justice), Judgment of 2 Nov. 2006 – III ZR 190/05, <https://openjur.de/u/79313.html> (in German) (Accessed 31 August 2020); BGH (Federal Court of Justice), Judgment of 6 Oct. 2016 – III ZR 140/15, <https://openjur.de/u/953787.html> (in German) (Accessed 31 August 2020).

43 BVerfG (Federal Constitutional Court), Order of 15 Feb. 2006 – 2 BvR 1476/03, [http://www.bverfg.de/e/rk20060215\\_2bvr147603.html](http://www.bverfg.de/e/rk20060215_2bvr147603.html) (in German) (Accessed 31 August 2020); BGH (Federal Court of Justice), Order of 13 Aug. 2013 – 2 BvR 2660/06, 2 BvR 487/07, <https://www.bundesverfassungsgericht.de/SharedDocs/En>

## VI. Enforcement of IHL

in 2006 that IHL does not grant individuals the right to claim compensation. The courts ruled that the relevant provisions in IHL (in particular Art. 3 Hague Convention (IV) and Art. 91 AP I) only provide a legal basis for compensation claims in the relationship between States, and not for individual remedies. The Federal Court of Justice held in 2016 that the general rules concerning the liability of the State for illegal conduct of its organs (*Amtshaftungsanspruch*) according to Art. 34 Basic Law in conjunction with Sec. 839 German Civil Code (*Bürgerliches Gesetzbuch*)<sup>44</sup> do not apply to damage caused to foreign citizens during armed military deployments abroad.<sup>45</sup>

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tscheidungen/DE/2013/08/rk20130813\_2bvr266006.html (in German) (Accessed 31 August 2020).

44 [https://www.gesetze-im-internet.de/englisch\\_bgb/index.html](https://www.gesetze-im-internet.de/englisch_bgb/index.html) (Accessed 31 August 2020).

45 BGH (Federal Court of Justice), Judgment of 6 October 2016 – III ZR 140/15.

## Annexes



## Annex 1: List of treaties of IHL and other selected treaties signed / ratified by Germany

|   | <i>Federal Law Gazette / Bundesgesetzblatt<br/>German Imperial Gazette / Reichsgesetzblatt<br/>Prussian Official Gazette / Königlich Preußischer Staats-Anzeiger</i> | Signature, Acceptance (A), Consent to be bound (B) | Entered into force in Germany |
|---|--|--|-------------------------------|
| 1864 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field   |  | 22 August 1864                                     |                               |
| 1868 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight (St. Petersburg Declaration)   | Prussian Official Gazette 1968, p. 4786  |  |                               |
| 1899 Convention (II) with respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land  | German Imperial Gazette 1901 p. 423  | 29 Jul 1899  | 4 Sep 1900                    |
| 1899 Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864   | German Imperial Gazette 1901 p. 455  | 29 Jul 1899  | 4 Sep 1900                    |
| 1899 Declaration (IV:2) concerning the Prohibition of the Use of projectiles with the Sole Object to spread asphyxiating Poisonous Gases  | German Imperial Gazette 1901 p. 474  | 29 Jul 1899  | 4 Sep 1900                    |
| 1899 Declaration (IV:3) concerning the Prohibition of the use of Bullets which can easily expand or change their form inside the Human Body such as Bullets with a Hard Covering which does not completely cover the Core, or containing indentations | German Imperial Gazette 1901 p. 478  | 29 Jul 1899  | 4 Sep 1900                    |

*Annex 1: List of treaties of IHL and other selected treaties signed / ratified by Germany*

|   |                                       |             |             |
|---|---------------------------------------|-------------|-------------|
| 1904 Convention for the Exemption of Hospital Ships, in Time of War, from The Payment of all Dues and Taxes Imposed for the Benefit of the State            |                                       | 21 Dec 1904 | 26 Mar 1907 |
| 1907 Convention (III) relative to the Opening of Hostilities  | German Imperial Gazette 1910 p. 82    | 18 Oct 1907 | 26 Jan 1910 |
| 1907 Convention (IV) respecting the Laws and Customs of War on Land and Annex to the Convention: Regulations Respecting the Laws and Customs of War on Land | German Imperial Gazette 1910 p. 107   | 18 Oct 1907 | 26 Jan 1910 |
| 1907 Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land   | German Imperial Gazette 1910 p. 151   | 18 Oct 1907 | 26 Jan 1910 |
| 1907 Convention (VI) relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities  | German Imperial Gazette 1910 p. 181   | 18 Oct 1907 | 26 Jan 1910 |
| 1907 Convention (VII) relating to the Conversion of Merchant Ships into War-Ships   | German Imperial Gazette 1910 p. 207   | 18 Oct 1907 | 26 Jan 1910 |
| 1907 Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines  | German Imperial Gazette 1910 p. 231   | 18 Oct 1907 | 26 Jan 1910 |
| 1907 Convention (IX) concerning Bombardment by Naval Forces in Time of War  | German Imperial Gazette 1910 p. 256   | 18 Oct 1907 | 26 Jan 1910 |
| 1907 Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention   | German Imperial Gazette 1910 p. 283   | 18 Oct 1907 | 26 Jan 1910 |
| 1907 Convention (XI) relative to certain Restrictions with regard to the Exercise of the Right of Capture in Naval War                                      | German Imperial Gazette 1910 p. 316   | 18 Oct 1907 | 26 Jan 1910 |
| 1907 Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War  | German Imperial Gazette 1910 p. 343   | 18 Oct 1907 | 26 Jan 1910 |
| 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare                    | German Imperial Gazette 1929 II p.173 | 17 Jun 1925 | 25 Apr 1929 |
| 1936 Procès-Verbal: Relating to the Rules of Submarine Warfare Set Forth in Part IV of the Treaty of London of 22 April 1930                                |                                       |             | 23 Nov 1936 |

*Annex 1: List of treaties of IHL and other selected treaties signed / ratified by Germany*

|  |   |             |              |
|--|---|-------------|--------------|
| 1948 Convention on the Prevention and Punishment of the Crime of Genocide  | Federal Law Gazette 1954 II. p. 729                                       |             | 22 Feb 1955  |
| 1949 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field   | Federal Law Gazette 1954 II. p. 783                                       |             | 3 Mar 1955   |
| 1949 Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea   | Federal Law Gazette 1954 II. p. 813                                       |             | 3 Mar 1955   |
| 1949 Convention (III) relative to the Treatment of Prisoners of War  | Federal Law Gazette 1954 II. p. 838                                       |             | 3 Mar 1955   |
| 1949 Convention (IV) relative to the Protection of Civilian Persons in Time of War   | Federal Law Gazette 1954 II. p. 917; Federal Law Gazette 1956 II. p. 1586 |             | 3 Mar 1955   |
| – 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)      | Federal Law Gazette 1990 II. p. 1550,                                     | 23 Dec 1977 | 14 Aug 1991  |
| – 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) | Federal Law Gazette 1990 II. p. 1637                                      | 23 Dec 1977 | 14 Aug 1991  |
| – 2005 Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)              | Federal Law Gazette 2009 II. p. 222                                       | 13 Mar 2006 | 17 Dec 2009  |
| 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict   | Federal Law Gazette 1967 II. p. 1233                                      |             | 11 Nov 1967  |
| – 1954 Protocol to the Convention for the Protection of Cultural Property in the Event of Armed conflict   | Federal Law Gazette 1967 II. p. 1300                                      |             | 11 Nov. 1967 |
| – 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict  | Federal Law Gazette 2009 II. p. 716 Federal Law Gazette 2012 II. p. 54    |             | 25 Feb 2010  |

*Annex 1: List of treaties of IHL and other selected treaties signed / ratified by Germany*

|  |   |             |             |
|--|---|-------------|-------------|
| 1966 International Covenant on Civil and Political Rights  | Federal Law Gazette 1973 II. p. 1533  | 9 Oct 1968  | 23 Mar 1976 |
| – 1966 Optional Protocol to the International Covenant on Civil and Political Rights   | Federal Law Gazette 1992 II. p. 1246  |             | 25 Nov 1993 |
| – 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of death penalty  | Federal Law Gazette 1992 II. p. 390   | 13 Feb 1990 | 18 Nov 1992 |
| 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction   | Federal Law Gazette 1983 II. p. 132   | 10 Apr 1972 | 7 Apr 1983  |
| 1976 Convention on the prohibition of Military or any Hostile Use of Environmental Modification Techniques   | Federal Law Gazette 1983 II. p. 125   | 18 May 1977 | 24 May 1983 |
| 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects                             | Federal Law Gazette 1992 II. p. 958;<br>Federal Law Gazette 1993 II. p. 935 | 10 Apr 1981 | 25 May 1993 |
| 1980 Protocols I-III to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects |   | 10 Apr 1981 | 25 May 1993 |
| – Protocol I on Non-Detectable Fragments   | Federal Law Gazette 1992 II. p. 958, 967                                    |             |             |
| – Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Trap and Other Devices  | Federal Law Gazette 1992 II. p. 958, 968                                    |             |             |
| – Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons  | Federal Law Gazette 1992 II. P. 958, 975                                    |             |             |

*Annex 1: List of treaties of IHL and other selected treaties signed / ratified by Germany*

|  |                                      |                 |             |
|--|--------------------------------------|-----------------|-------------|
| – 1995 Protocol IV to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects on Blinding Laser Weapons   | Federal Law Gazette 1997 II. p. 827  | 27 Jun 1997 (B) | 30 Jul 1998 |
| – 1996 Amended Protocol II to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects                     | Federal Law Gazette 1997 II. p. 806  | 2 May 1997 (B)  | 3 Dec 1998  |
| – 2001 Amendment to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects                                    | Federal Law Gazette 2004 II. p. 1507 | 26 Jan 2005 (A) | 26 Jul 2005 |
| – 2003 Protocol V to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects on Explosive Remnants of War | Federal Law Gazette 2005 II. p. 122  | 3 Mar 2005 (B)  | 12 Nov 2006 |
| 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment  | Federal Law Gazette 1990 II. p. 246  | 13 Oct 1986     | 31 Oct 1990 |
| – 1992 Amendments to Art. 17 (7) and 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment  | Federal Law Gazette 1996 II. p. 284  | 8 Oct 1996 (A)  |             |
| – 2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment   | Federal Law Gazette 2008 II. p. 855  | 20 Sep 2006     | 4 Dec 2008  |
| 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries  |                                      | 20 Dec 1990     |             |

*Annex 1: List of treaties of IHL and other selected treaties signed / ratified by Germany*

|  |  |                 |             |
|--|--|-----------------|-------------|
| 1989 Convention on the Rights of the Child   | Federal Law Gazette 1992 II. p. 121      | 26 Jan 1990     | 5 Apr 1992  |
| – 2000 Optional Protocol to the Convention on the Rights for the Child on the Involvement of Children in Armed Conflict              | Federal Law Gazette 2004 II. p. 1354     | 06 Sep 2000     | 13 Jan 2015 |
| – 2011 Optional Protocol to the Convention on the Rights of the Child on a communications procedure                                  | Federal Law Gazette 2012 II. p. 1547     | 28 Feb 2012     | 14 Apr 2014 |
| 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction  | Federal Law Gazette 1994 II. p. 806      | 13 Jan 1993     | 29 Apr 1997 |
| 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction | Federal Law Gazette 1998 II. p. 778      | 3 Dec 1997      | 1 Mar 1999  |
| 1998 Rome Statute of the International Criminal Court  | Federal Law Gazette 2000 II. p. 1393     | 10 Dec 1998     | 1 Jul 2002  |
| – 2002 Agreement on the Privileges and Immunities of the International Criminal Court  | Federal Law Gazette 2004 II. P. 1138     | 14 Jul 2003     |             |
| – 2010 Amendment to Art. 8 of the Rome Statute of the International Criminal Court   | Federal Law Gazette 2013 II. p. 139      | 03 Jun 2013 (A) | 3 Jun 2014  |
| – 2010 Amendments on the crime of aggression to the Rome Statute of the International Criminal Court                                 | Federal Law Gazette 2013 II. p. 139, 146 | 03 Jun 2013 (A) | 3 Jun 2014  |
| 2008 Convention on Cluster Munitions   | Federal Law Gazette 2009 II. p. 502, 504 | 3 Dec 2008      | 1 Aug 2010  |
| 2013 Arms Trade Treaty   | Federal Law Gazette 2013 II. p. 1426     | 3 Jun 2013      | 24 Dec 2014 |

## Annex 2: Code of Crimes against International Law

### **Part 1 General provisions**

#### **Section 1 Scope of application**

This Act shall apply to all criminal offences against international law designated under this Act, to offences pursuant to sections 6 to 12 even when the offence was committed abroad and bears no relation to Germany. For offences pursuant to section 13 that were committed abroad, this Act shall apply independently of the law of the place where the act was committed if the perpetrator is German or if the offence is directed against the Federal Republic of Germany.

#### **Section 2 Application of the general law**

The general criminal law shall apply to offences pursuant to this Act so far as this Act does not make special provision in sections 1, 3 to 5, and 13 subsection (4).

#### **Section 3 Acting upon orders**

Whoever commits an offence pursuant to Sections 8 to 15 in execution of a military order or of an order comparable in its actual binding effect shall have acted without guilt so far as the perpetrator does not realise that the order is unlawful and so far as it is also not manifestly unlawful.

#### **Section 4 Responsibility of military commanders and other superiors**

- (1) A military commander or civilian superior who omits to prevent his or her subordinate from committing an offence pursuant to this Act shall be punished in the same way as a perpetrator of the offence committed by that subordinate. Section 13 subsection (2) of the Criminal Code shall not apply in this case.

(2) Any person effectively giving orders or exercising command and control in a unit shall be deemed equivalent to a military commander. Any person effectively exercising command and control in a civil organisation or in an enterprise shall be deemed equivalent to a civilian superior.

### Section 5 Non-applicability of statute of limitations

The prosecution of serious criminal offences pursuant to this Act and the execution of sentences imposed on their account shall not be subject to any statute of limitations.

## Part 2 Crimes against International Law

### *Chapter 1 Genocide and crimes against humanity*

#### Section 6 Genocide

(1) Whoever with the intent of destroying as such, in whole or in part, a national, racial, religious or ethnic group

1. kills a member of the group,
2. causes serious bodily or mental harm to a member of the group, especially of the kind referred to in section 226 of the Criminal Code,
3. inflicts on the group conditions of life calculated to bring about their physical destruction in whole or in part,
4. imposes measures intended to prevent births within the group,
5. forcibly transfers a child of the group to another group

shall be punished with imprisonment for life.

(2) In less serious cases referred to under subsection (1), numbers 2 to 5, the punishment shall be imprisonment for not less than five years.

## Section 7

### Crimes against humanity

- (1) Whoever, as part of a widespread or systematic attack directed against any civilian population,
  1. kills a person,
  2. inflicts, with the intent of destroying a population in whole or in part, conditions of life on that population or on parts thereof, being conditions calculated to bring about its physical destruction in whole or in part,
  3. traffics in persons, particularly in women or children, or whoever enslaves a person in another way and in doing so arrogates to himself a right of ownership over that person,
  4. deports or forcibly transfers, by expulsion or other coercive acts, a person lawfully present in an area to another State or another area in contravention of a general rule of international law,
  5. tortures a person in his or her custody or otherwise under his or her control by causing that person substantial physical or mental harm or suffering where such harm or suffering does not arise only from sanctions that are compatible with international law,
  6. sexually coerces, rapes, forces into prostitution or deprives a person of his or her reproductive capacity, or confines a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population,
  7. causes a person's enforced disappearance, with the intention of removing him or her from the protection of the law for a prolonged period of time,
    - (a) by abducting that person on behalf of or with the approval of a State or a political organisation, or by otherwise severely depriving such person of his or her physical liberty, followed by a failure immediately to give truthful information, upon inquiry, on that person's fate and whereabouts, or
    - (b) by refusing, on behalf of a State or of a political organisation or in contravention of a legal duty, to give information immediately on the fate and whereabouts of the person deprived of his or her physical liberty under the circumstances referred to under letter (a) above, or by giving false information thereon,
  8. causes another person severe physical or mental harm, especially of the kind referred to in section 226 of the Criminal Code,
  9. severely deprives, in contravention of a general rule of international law, a person of his or her physical liberty, or

10. persecutes an identifiable group or collectivity by depriving such group or collectivity of fundamental human rights, or by substantially restricting the same, on political, racial, national, ethnic, cultural or religious, gender or other grounds that are recognised as impermissible under the general rules of international law  
shall be punished, in the cases referred to under numbers 1 and 2, with imprisonment for life, in the cases referred to under numbers 3 to 7, with imprisonment for not less than five years, and, in the cases referred to under numbers 8 to 10, with imprisonment for not less than three years.
- (2) In less serious cases under subsection (1), number 2, the punishment shall be imprisonment for not less than five years, in less serious cases under subsection (1), numbers 3 to 7, imprisonment for not less than two years, and in less serious cases under subsection (1), numbers 8 and 9, imprisonment for not less than one year.
- (3) Where the perpetrator causes the death of a person through an offence pursuant to subsection (1), numbers 3 to 10, the punishment shall be imprisonment for life or for not less than ten years in cases under subsection (1), numbers 3 to 7, and imprisonment for not less than five years in cases under subsection (1), numbers 8 to 10.
- (4) In less serious cases under subsection (3) the punishment for an offence pursuant to subsection (1), numbers 3 to 7, shall be imprisonment for not less than five years, and for an offence pursuant to subsection (1), numbers 8 to 10, imprisonment for not less than three years.
- (5) Whoever commits a crime pursuant to subsection (1) with the intention of maintaining an institutionalised regime of systematic oppression and domination by one racial group over any other shall be punished with imprisonment for not less than five years so far as the offence is not punishable more severely pursuant to subsection (1) or subsection (3). In less serious cases the punishment shall be imprisonment for not less than three years so far as the offence is not punishable more severely pursuant to subsection (2) or subsection (4).

***Chapter 2***  
***War crimes***

**Section 8**  
**War crimes against persons**

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character

1. kills a person who is to be protected under international humanitarian law,
2. takes hostage a person who is to be protected under international humanitarian law,
3. treats a person who is to be protected under international humanitarian law cruelly or inhumanly by causing him or her substantial physical or mental harm or suffering, especially by torturing or mutilating that person,
4. sexually coerces, rapes, forces into prostitution or deprives a person who is to be protected under international humanitarian law of his or her reproductive capacity, or confines a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population,
5. conscripts children under the age of fifteen years into the armed forces, or enlists them in the armed forces or in armed groups, or uses them to participate actively in hostilities,
6. deports or forcibly transfers, by expulsion or other coercive acts, a person who is to be protected under international humanitarian law and lawfully present in an area to another State or another area in contravention of a general rule of international law,
7. imposes on, or executes a substantial sentence in respect of a person who is to be protected under international humanitarian law, in particular the death penalty or imprisonment, without that person having been sentenced in a fair and regular trial affording the legal guarantees required by international law,
8. exposes a person who is to be protected under international humanitarian law to the risk of death or of serious injury to health
  - (a) by carrying out experiments on such a person, being a person who has not previously given his or her voluntary and express consent, or where the experiments concerned are neither medically necessary nor carried out in his or her interest,
  - (b) by taking body tissue or organs from such a person for transplantation purposes so far as it does not constitute removal of

blood or skin for therapeutic purposes in conformity with generally recognised medical principles and the person concerned has previously not given his or her voluntary and express consent, or

(c) by using treatment methods that are not medically recognised on such person, without this being necessary from a medical point of view and without the person concerned having previously given his or her voluntary and express consent, or

9. treats a person who is to be protected under international humanitarian law in a gravely humiliating or degrading manner

shall be punished, in the cases referred to under number 1, with imprisonment for life, in the cases referred to under number 2, with imprisonment for not less than five years, in the cases referred to under numbers 3 to 5, with imprisonment for not less than three years, in the cases referred to under numbers 6 to 8, with imprisonment for not less than two years, and, in the cases referred to under number 9, with imprisonment for not less than one year.

(2) Whoever in connection with an international armed conflict or with an armed conflict not of an international character, wounds a member of the adverse armed forces or a combatant of the adverse party after the latter has surrendered unconditionally or is otherwise placed hors de combat shall be punished with imprisonment for not less than three years.

(3) Whoever in connection with an international armed conflict

1. unlawfully holds as a prisoner or unjustifiably delays the return home of a protected person within the meaning of subsection (6), number 1,
2. transfers, as a member of an Occupying Power, parts of its own civilian population into the occupied territory,
3. compels a protected person within the meaning of subsection (6), number 1, by force or threat of appreciable harm to serve in the forces of a hostile Power or
4. compels a national of the adverse party by force or threat of appreciable harm to take part in the operations of war directed against his or her own country

shall be punished with imprisonment for not less than two years.

(4) Where the perpetrator causes the death of the victim through an offence pursuant to subsection (1), numbers 2 to 6, the punishment shall, in the cases referred to under subsection (1), number 2, be imprisonment for life or imprisonment for not less than ten years, in the

cases referred to under subsection (1), numbers 3 to 5, imprisonment for not less than five years, and, in the cases referred to under subsection (1), number 6, imprisonment for not less than three years. Where an act referred to under subsection (1), number 8, causes death or serious harm to health, the punishment shall be imprisonment for not less than three years.

- (5) In less serious cases referred to under subsection (1), number 2, the punishment shall be imprisonment for not less than two years, in less serious cases referred to under subsection (1), numbers 3 and 4, and under subsection (2) the punishment shall be imprisonment for not less than one year, in less serious cases referred to under subsection (1), number 6, and under subsection (3), number 1, the punishment shall be imprisonment from six months to five years.
- (6) Persons who are to be protected under international humanitarian law shall be
  1. in an international armed conflict: persons protected for the purposes of the Geneva Conventions and of the Protocol Additional to the Geneva Conventions (Protocol I) (annexed to this Act), namely the wounded, the sick, the shipwrecked, prisoners of war and civilians;
  2. in an armed conflict not of an international character: the wounded, the sick, the shipwrecked as well as persons taking no active part in the hostilities who are in the power of the adverse party;
  3. in an international armed conflict and in an armed conflict not of an inter-national character: members of armed forces and combatants of the ad-verse party, both of whom have laid down their arms or have no other means of defence.

## Section 9

### War crimes against property and other rights

- (1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character pillages or, unless this is imperatively demanded by the necessities of the armed conflict, otherwise extensively destroys, appropriates or seizes property of the adverse party contrary to international law, such property being in the power of the perpetrator's party, shall be punished with imprisonment from one to ten years.
- (2) Whoever in connection with an international armed conflict and contrary to international law declares the rights and actions of all, or of a substantial proportion of, the nationals of the hostile party abolished,

suspended or inadmissible in a court of law shall be punished with imprisonment from one to ten years.

## Section 10

### War crimes against humanitarian operations and emblems

- (1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character
  1. directs an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law, or
  2. directs an attack against personnel, buildings, material, medical units and transport, using the distinctive emblems of the Geneva Conventions in conformity with international humanitarian law shall be punished with imprisonment for not less than three years. In less serious cases, particularly where the attack does not take place by military means, the punishment shall be imprisonment for not less than one year.
- (2) Whoever in connection with an international armed conflict or with an armed conflict not of an international character makes improper use of the distinctive emblems of the Geneva Conventions, of the flag of truce, of the flag or of the military insignia or of the uniform of the enemy or of the United Nations, thereby causing a person's death or serious personal injury (section 226 of the Criminal Code) shall be punished with imprisonment for not less than five years.

## Section 11

### War crimes consisting in the use of prohibited methods of warfare

- (1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character
  1. directs an attack by military means against the civilian population as such or against individual civilians not taking direct part in hostilities,
  2. directs an attack by military means against civilian objects, so long as these objects are protected as such by international humanitarian law, namely buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, or against undefended towns, villages, dwellings or buildings, or against demili-

tarised zones, or against works and installations containing dangerous forces,

3. carries out an attack by military means and definitely anticipates that the attack will cause death or injury to civilians or damage to civilian objects on a scale out of proportion to the concrete and direct overall military ad-vantage anticipated,
4. uses a person who is to be protected under international humanitarian law as a shield to restrain a hostile party from undertaking operations of war against certain targets,
5. uses starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival or impedes relief supplies in contravention of international humanitarian law,
6. orders or threatens, as a commander, that no quarter will be given, or
7. treacherously kills or wounds a member of the hostile armed forces or a combatant of the adverse party

shall be punished with imprisonment for not less than three years. In less serious cases under number 2 the punishment shall be imprisonment for not less than one year.

- (2) Where the perpetrator causes the death or serious injury of a civilian (section 226 of the Criminal Code) or of a person who is to be protected under international humanitarian law through an offence pursuant to subsection (1), numbers 1 to 6, he shall be punished with imprisonment for not less than five years. Where the perpetrator intentionally causes death, the punishment shall be imprisonment for life or for not less than ten years.
- (3) Whoever in connection with an international armed conflict carries out an attack by military means and definitely anticipates that the attack will cause widespread, long-term and severe damage to the natural environment on a scale out of proportion to the concrete and direct overall military advantage anticipated shall be punished with imprisonment for not less than three years.

## Section 12

### War crimes consisting in employment of prohibited means of warfare

- (1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character
  1. employs poison or poisoned weapons,
  2. employs biological or chemical weapons or

3. employs bullets which expand or flatten easily in the human body, in particular bullets with a hard envelope which does not entirely cover the core or is pierced with incisions  
shall be punished with imprisonment for not less than three years.
- (2) Where the perpetrator causes the death or serious injury of a civilian (section 226 of the Criminal Code) or of a person protected under international humanitarian law through an offence pursuant to subsection (1), he shall be punished with imprisonment for not less than five years. Where the perpetrator intentionally causes death, the punishment shall be imprisonment for life or for not less than ten years.

Section 13  
Crime of aggression

- (1) Whoever wages a war of aggression or commits any other act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations shall be punished with imprisonment for life.
- (2) Whoever plans, prepares or initiates a war of aggression or any other act of aggression within the meaning of subsection (1) shall be punished with imprisonment for life or imprisonment for not less than ten years. The offence pursuant to the first sentence shall be punishable only if
  1. the war of aggression has been waged or the other act of aggression has been committed or
  2. it creates a danger of a war of aggression or any other act of aggression for the Federal Republic of Germany.
- (3) An act of aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.
- (4) Only persons in a position effectively to exercise control over or to direct the political or military action of a State may be party to an offence pursuant to subsections (1) and (2).
- (5) In less serious cases under subsection (2) the punishment shall consist of imprisonment of not less than five years.

**Chapter 4**  
**Other crimes**

**Section 14**  
**Violation of the duty of supervision**

- (1) A military commander who intentionally or negligently omits properly to supervise a subordinate under his or her command or under his or her effective control shall be punished for violation of the duty of supervision if the sub-ordinate commits an offence pursuant to this Act, where the imminent commission of such an offence was discernible to the commander and he or she could have prevented it.
- (2) A civilian superior who intentionally or negligently omits properly to supervise a subordinate under his or her authority or under his or her effective control shall be punished for violation of the duty of supervision if the subordinate commits an offence pursuant to this Act, where the imminent commission of such an offence was discernible to the superior without more and he or she could have prevented it.
- (3) Section 4 subsection (2) shall apply mutatis mutandis.
- (4) Intentional violation of the duty of supervision shall be punished with imprisonment for not more than five years, and negligent violation of the duty of supervision shall be punished with imprisonment for not more than three years.

**Section 15**  
**Omission to report a crime**

- (1) A military commander or a civilian superior who omits immediately to draw the attention of the agency responsible for the investigation or prosecution of any offence pursuant to this Act, to such an offence committed by a subordinate, shall be punished with imprisonment for not more than five years.
- (2) Section 4 subsection (2) shall apply mutatis mutandis.

**Annex**  
(to Section 8 subsection (6) number 1)

For the purposes of this Act the term “Geneva Conventions” shall constitute a reference to the following:

- I. Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Federal Law Gazette 1954 II page 781, 783),

*Annex 2: Code of Crimes against International Law*

- II. Geneva Convention of 12 August 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Federal Law Gazette 1954 II page 781, 813),
- III. Geneva Convention of 12 August 1949 relative to the Treatment of Prisoners of War (Federal Law Gazette 1954 II page 781, 838) and
- IV. Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War (Federal law Gazette 1954 II page 781, 917).

For the purposes of this Act Protocol I shall constitute a reference to the following:

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 (Federal Law Gazette 1990 II page 1550, 1551).