

Germany, Government Reply on Chechnya

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: German Bundestag, Document 13/718, 13th legislative period, March 9, 1995; original in German, unofficial translation.]

REPLY by the Federal Government to the written questions submitted by the Parliamentary Social Democratic Party - Document 13/437 - The Federal Government's position on Russian action in the Chechen conflict

[The reply was issued on behalf of the Federal Government in a letter of the Federal Ministry of Foreign Affairs dated March 2, 1995.]

The document also sets out – in small type – the text of the questions.] [...]

In the debate on Chechnya in the German Bundestag the Federal Government left many important questions unanswered. Its position before and after that debate has given rise to doubts as to whether the Federal Government has done everything within its power, and is continuing to do everything possible, to bring about an end to the use of force and to the violations of international law and human rights in Chechnya.

Preliminary remarks

The Federal Government rejects as unfounded the claim made in the written question [...]

[...]

However, the declaration made by Federal Foreign Minister Dr Klaus Kinkel on January 19, 1995 when

issuing a government policy statement on the Chechen conflict, namely that “We cannot compel the Russian government to take a specific course of action, we can only try to persuade it”, remains valid. [...]

6. Is the Federal Government of the opinion that Russian action in Chechnya violates Article 48 of Protocol I additional to the Geneva Conventions of 1949?

Under the terms of Article 1, para. 3, of the Protocol additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), taken in conjunction with the provisions of Article 2 common to the Geneva Conventions, Protocol I applies only to international armed conflicts arising between the contracting parties thereto. Therefore, it cannot apply to an internal conflict within the borders of a contracting State. However, the Federal Government has repeatedly reminded Russia of the latter’s duty to abide by its obligations under Protocol II additional to the 1949 Geneva Conventions, which provides for the protection of victims of non-international armed conflicts and thus applies to the conflict in Chechnya.

Discussion

1. How would you qualify the conflict in Chechnya? Under which provision of Protocol I could it be qualified as an international armed conflict? (P I, Art. 1(4))
2. Does the law of non-international armed conflicts contain a rule similar to that of Art. 48 of Protocol I? (P II, Part IV)
3. Was respect for IHL in the conflict in Chechnya an internal affair of the Russian Federation? On what grounds did Germany ask the Russian Federation to respect IHL in Chechnya? Did those grounds apply IHL to the fullest possible extent in this situation?