

Germany, Government Reply on the Kurdistan Conflict

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 12/8458, 12th legislative period, September 7, 1994; original in German, unofficial translation.]

REPLY by the Federal Government to the written question submitted by Bundestag member Vera Wollenberger and the parliamentary party of the Alliance 90/Greens

– Document 12/8219 – Kurdistan conflict

[The reply was issued on behalf of the Federal Government in a letter of the Federal Ministry of Foreign Affairs dated September 5, 1994. The document also sets out – in small type – the text of the questions.]

The Kurdish war of self-determination in Turkey claimed 4,200 lives on either side in 1993 (*Frankfurter Rundschau*, March 21, 1994). A total of 874 villages were destroyed. According to Prime Minister Tansu Ciller, in the last ten years the civil war has cost the Turkish State alone DM 95 billion (*Frankfurter Rundschau*, March 22, 1994). [...]

On April 28, 1994 the German Bundestag adopted a motion by the Parliamentary Social Democratic Party (in accordance with a resolution of April 12, 1994 put forward by the Foreign Affairs Committee, Document 12/7224), stating that the German Bundestag considers “the Turkish government’s policy of attempting to defeat the PKK by military force alone to be hopeless” and that “an escalation of the violence will not resolve the problem, but will simply cause greater harm and render means of reaching a peaceful solution more difficult.” [...]

The objective of German foreign policy should be to foster dialogue between the parties in conflict and to promote a peaceful solution. An initial step could, however, be to urge both sides to observe human rights and to comply with international humanitarian law applicable in armed conflict. At present both those principles are increasingly being violated in the conflict zone. [...]

1. To the knowledge and in the estimation of the Federal Government does the PKK satisfy the requirements of Article 1 of the regulations annexed to the Hague Convention of 1907?

If not, which requirements does it fail to satisfy?

If so, how can that fact be reconciled with the accusation that the PKK is a terrorist organization?

The term “belligerent” is defined in Article 1 of the Regulations annexed to Hague Convention IV Respecting the Laws and Customs of War on Land. Under the Convention the laws, rights and duties of war apply not only to armies but also to militia and volunteer corps fulfilling specific conditions listed in Article 1.

Prior to any examination of whether the PKK is to be deemed a belligerent within the meaning of that provision of Article 1, it must first be established whether Hague Convention IV is in fact applicable to the Kurdistan conflict. Article 2 of the Convention, known as the all-participation clause, stipulates that the provisions contained therein do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention. Therefore, the Convention does not apply to the Kurdish conflict.

[...]

1. The “International Conference on North-West Kurdistan”, held in Brussels on March 12 and 13, 1994, called upon the PKK (para. 20 of the final resolution) “to submit to the Swiss government – as the depositary of 1977 Protocol I additional to the 1949 Geneva Conventions – a declaration expressing its willingness to be bound by the applicable rules of international law, as provided for in Article 96, para. 3, of said Protocol I.” The Secretary General of the PKK, Abdullah Öcalan, stated his willingness to comply with that request.

Is the Federal Government willing to demand the same from the Turkish government, as the very first step towards de-escalation?”

Under Article 96, para. 3, of Protocol I additional to the 1949 Geneva Conventions, an “authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, para. 4,” may address a unilateral declaration to the depositary by which it undertakes to apply the Conventions and the Protocol in relation to that conflict.

Conflicts of the type referred to in Article 1, para. 4, include armed conflicts “in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination”. Neither of those criteria apply to the Kurdish conflict.

The Federal Government would, however, welcome a move by both parties to the Kurdish conflict to comply with the provisions relating to the law of war contained in the Geneva Conventions and Protocol I. In any event, Article 3 common to all the Geneva Conventions, which sets minimum standards to be observed by all parties to a non-international conflict, does apply. Furthermore, Article 3, para. 2, encourages the parties to an internal conflict specifically to bring into force, by means of special agreements, all or part of the other provisions of the Geneva Conventions.

Discussion

1. Is the situation in eastern Turkey/Kurdistan an armed conflict? Does IHL cover the situation? How should a declaration by the PKK under Art. 96(3) of Protocol I be interpreted? Does it oblige Turkey to respect the IHL of international armed conflicts? How could that declaration be interpreted under the IHL of non-international armed conflicts? (GC I-IV, Art. 3)
2.
 - a. Does the Hague Convention IV apply to the conflict? If Art. 1 of the Hague Regulations does not apply to the PKK, is it because not all parties to the conflict are parties to the Hague Convention? Because the PKK is not party to that Convention? Because the PKK is not a party to an international armed conflict?
 - b. If the PKK is not bound by Art. 1 of the Hague Regulations, does it not have any obligation to distinguish its fighters from the civilian population?
3. If PKK fighters are not covered by or fail to respect Art. 1 of the Hague Regulations, do they lose any protection under IHL?

© International Committee of the Red Cross