



Kristoffer Nilaus Tarp and Mikkel Runge Olesen

**Danish experiences in integrating International
Humanitarian Law and International Human Rights
Law in capacity building**

Kristoffer Nilaus Tarp

Analyst, Danish Institute for International Studies
krnt@diis.dk

Mikkel Runge Olesen

Postdoc, Danish Institute for International Studies
mro@diis.dk

Acknowledgements

The authors are grateful to the many knowledgeable individuals who agreed to be interviewed for this working paper as well as to the Danish Ministry of Defence, for funding the underlying research as well as a Nordic seminar on IHL and IHRL in capacity building held in Copenhagen on 17 November 2015.

DIIS Working Papers make DIIS researchers' and partners' work in progress available towards proper publishing. They may include documentation, which is not necessarily published elsewhere. DIIS Working Papers are published under the responsibility of the author alone. DIIS Working Papers should not be quoted without the express permission of the author.

DIIS WORKING PAPER 2015:07

DIIS Danish Institute for International Studies
Østbanegade 117, DK-2100 Copenhagen, Denmark

Tel: +45 32 69 87 87

E-mail: diis@diis.dk

www.diis.dk

ISBN: 978-87-7605-782-4 (pdf)

DIIS publications can be downloaded free of charge from www.diis.dk

© Copenhagen 2015, the authors and DIIS

TABLE OF CONTENTS

ABOUT THIS PAPER	4
BACKGROUND	5
IHL AND IHRL IN DOMESTIC TRAINING	6
INTEGRATING IHL AND IHRL IN EXTERNAL CAPACITY BUILDING.....	7
Experiences from Iraq	8
Experiences from Somalia	9
Experiences from Afghanistan.....	9
Experiences from the Eastern African Standby Force	11
KEY FINDINGS.....	11
Training design and modalities	11
Knowledge capturing and hand-over.....	12
Skills and resources	12
Strategy and frameworks	12
Impact and sustainability	13
TRAINING AND BACKGROUND RESOURCES FOR IHL AND IHRL	14

ABOUT THIS PAPER

This paper seeks to document Danish experiences with integrating International Humanitarian Law (IHL) and International Human Rights Laws (IHRL) in capacity building and training of foreign armed forces. It is the first such attempt to present experiences from different international missions and engagements and has thus relied on “inventing” ways and means of identifying and documenting these. The paper builds on a range of interviews with individuals directly or indirectly involved in training and capacity building activities such as military legal advisors and civilian advisors as well as members of the armed forces. Further, the paper draws on presentations and discussions at a Nordic seminar on IHL and IHRL in capacity building held in Copenhagen on 17 November 2015. The majority of relevant Danish military legal advisors were identified and interviewed for this paper. However, the paper would have benefitted from additional interviews with officers in the armed forces with hands on experience from IHL and IHRL capacity building and training in international missions. Future analysis could therefore focus on further identification of practitioners involved in IHL and IHRL training and capacity building from within the armed forces.

While the paper presents an overview of IHL and IHRL capacity building and training activities to date it does not satisfactorily present the impact of these activities. Respondents were all asked about their views on the outcomes of the activities conducted in terms of changed behaviour, procedures and practises. However, due to the ad hoc and often discontinued nature of their work, few offered any views on the impact generated. This paper therefore argues that more should be done to monitor the outcomes and impact of IHL and IHRL capacity building and training including through establishing a baseline i.e. some form of assessment of IHL and IHRL adherence prior to the capacity building and training intervention.

At the end of this working paper, key findings have been grouped under 5 thematic categories to provide the reader with “easy access” to key observations. A list of useful resources on IHL and IHRL, all of which can be accessed online, is also included.

BACKGROUND

Recent terror attacks in Beirut over Paris to Bamako are frightening examples of what warfare looks like when there are no rules guiding the belligerent. When the internationally agreed laws of armed conflict are disregarded entirely by non-state armed groups, civilians end up paying the price. Recent examples including from Iraq, Syria and Yemen demonstrate that also traditional armed forces are perfectly capable of ignoring International Humanitarian Law (IHL) and engage in summary killings of civilians, torture, wrongful detention, rejection of basic rights etc.

In past decades, the Nordic armed forces have been engaged in out of area missions in a range of contexts namely in Iraq and Afghanistan. These interventions have involved training and capacity development of local and national security forces. In many contexts the local security forces have had problematic track records with regards to observing the international laws of armed conflict and human rights more broadly. Nordic engagements have often followed regime change and often, neither the past nor the incoming regimes have considered adherence to IHL and IHRL a priority. Particularly not in the initial stages of fragile political settlements with continued fighting and disputed state authority.

In these contexts, Nordic troops have often been deployed into realities where the needs are endless and everything is a priority. The main focus in these contexts has, understandably, been to deliver on the stated military objectives while ensuring force protection and establishing working relations with, and building the capacity of, local security authorities. For the latter, efforts have often focused on basic training including shooting, patrolling, and command and control. This priority setting is hardly surprising in a context where ambitious military objectives are to be delivered under the constraints of tight troop ceilings often in inhospitable and unsafe areas of operation. It does however beg the question whether we can justify strengthening the military capabilities of security authorities with flawed IHL and IHRL track records, without also trying to ensure that these authorities observe the laws of armed conflict and respect basic human rights?

Recent international missions including in Afghanistan and Iraq, have seen unprecedented threats of asymmetrical attacks from non-state armed groups operating among and between civilians. In response, international forces have sought to win hearts and minds by trying to convince local populations of the benevolence of the international presence while promoting the legitimacy of the elected government and its security institutions. In the very same communities, state authority and legitimacy has been (and is still) contested by different local, often armed, groups. Through their support to national security authorities (police, military, intelligence), the international forces are therefore seen as responsible not only for their own behaviour but also the conduct of these national actors. Joint patrolling, campaigns and operations between national and international forces have further strengthened the perception among local populations

that actions taken by national security authorities are inseparable from the policies and principles applied by the international forces. Groups contesting state authorities evidently seize every opportunity to reinforce these perceptions when it is deemed to benefit their attempts to undermine the legitimacy of the state. Hence, most IHL and IHRL violations committed by national security forces are directly associated with the international forces undermining their legitimacy and severely challenging other efforts to win hearts and minds.

In summary, ensuring that national security authorities adhere to IHL and IHRL principles is a precondition for shifting the loyalty and trust of local populations from competing centres of authority towards the elected government and its formal security institutions. It is therefore also a necessary consideration in every exit strategy - at least one that leaves behind societies with accountable and trustworthy security institutions. This supports the argument that IHL and IHRL must be integrated from the onset in training and capacity building efforts in all out of area military engagements, which requires sustained focus from the capital level including through the issuance of directives and requirements for reporting on progress. It also requires that resources are made available to ensure the integration of IHL and IHRL elements in training and capacity development activities and the designation of specific focal points to accompany and monitor this work.

IHL AND IHRL IN DOMESTIC TRAINING

Many respondents explained that the approaches to integrating IHL and IHRL in capacity building and training draw largely on the way Danish military personnel themselves are trained. This section provides a brief overview of domestic training and capacity building efforts.

Currently, IHL and IHRL trainings in Denmark are largely undertaken by individual military legal advisors or officers at each brigade. Most soldiers encounter IHL through a brief formal introduction to IHL as part of their basic training, through a session on the soldier's card and through the integration of IHL-related dilemmas in exercises. Specialised elements of the armed forces (forward air control, sanitary corps, military police etc.) receive IHL training pertaining specifically to their fields. At the level of officers, the training is undertaken by military legal advisors at the Officer Schools and the Defence academy and seeks to cover a broader range of IHL issues.

The training of the military legal advisors, which is undertaken by the Military Prosecution Service, also referred to as the Judge Advocate General's Corps, focuses mostly on IHL and less on IHRL. However, the forthcoming Military Manual integrates human rights aspects in addition to IHL and other relevant international law. The manual first of all examines the applicability of the European Convention on Human Rights and other relevant human rights instruments on military operations abroad and then goes on to describe how IHRL interact with IHL where applicable in areas such as; the use of deadly force,

destruction of property, detention of civilians, internment, and the right to privacy and family rights.

The manual also introduces a range of minimum standards for example within the area of deprivation of liberty that seek to make decision-making easier in international operations. In most instances these minimum standards align with the “highest common denominator” of the various legal frameworks at play i.e. the highest standard set by the various legal texts dealing with a specific topic such as the different rules for detention of different types of individuals. When the manual is published, it will be processed into training materials and “parcelled” for each branch of the armed forces and for personnel at different rank and in different functions. The purpose of the military manual is to present members of the armed forces with one authoritative text that lays out the all rules and regulations applying to individuals serving the Danish military. It thus eliminates the need to consult various written sources and makes decision-making clearer, easier and more transparent.

INTEGRATING IHL AND IHRL IN EXTERNAL CAPACITY BUILDING

At the level of global policy setting, the Copenhagen Process on the Handling of Detainees in International Military Operations (The Copenhagen Process) was concluded in Copenhagen on 19 October 2012. The Copenhagen Process Principles and Guidelines apply to the detention of persons who are being deprived of their liberty for reasons related to an international military operation.

When Denmark has engaged in capacity development projects on IHL and IHRL, it has seldom done so independently. More often, the deployed teams have been looking for ways of contributing to existing initiatives led by larger coalition partners. The experience has been that there are, for example, almost always ongoing rule of law (RoL) projects to which contributions can be made. One schism has been that RoL work in a Danish context largely falls under the civilian pillar i.e. under the Ministry of Foreign Affairs and not the armed forces. However, in both Afghanistan and Iraq military legal advisors have often been the only legal experts around and have, thus, taken upon themselves to support RoL initiatives including projects relating more to IHRL than IHL. In other situations the civilian and military sides have worked together on RoL-initiatives. The army’s Rebuilding Unit Denmark, in cooperation with civilian advisors seconded by the Ministry of Foreign Affairs, also worked on issues around democratisation and human rights in Iraq in the area around Bashra. The slower pace of deploying civilian legal advisors is unlikely to change. When faced with IHRL-type training and capacity building tasks, the military legal advisors would therefore benefit from better access to guidance and advice. IN open armed conflict the reliance on military protection is also a fact of life necessitating good coordination and communication between the civilian and military components.

Experiences from Iraq

In 2003 in Iraq, Denmark helped train recruits for the local security force being established in Eastern Iraq. The recruits were members of the local communities and tribes and were intended to undertake policing tasks following the dismantling of the Saddam Hussein era security authorities and would eventually be absorbed in the Iraqi armed forces. Besides technical training including shooting training, the Danish training focussed on inducing a mind-set amongst the recruits to ensure that the forces would be seen as trustworthy and helpful (many were trained to man checkpoints) and not as preying on the local population. As many of the recruits were illiterate, the instructor - a Danish military legal advisor - used drawings (produced by a colleague with good drawing skills) to present the participants with different scenarios in which decision-making was needed. No direct reference was made to IHL/IHRL, but most scenarios dealt with the use of force; respectful behaviour; the rights and obligations of citizens; etc.. The advantage of this approach was the ability to integrate basic IHL and IHRL principles into training of individuals with limited capacity to grasp technical legal texts. The weakness would seem to be the inability to "tick off" key elements of international humanitarian and human rights law as would be the case with a more traditional curriculum. The trainer involved in this initiative also highlighted that lack of motivation from the trainees could often undermine the training. Diplomas or certificates for satisfactorily completed training had proven an effective way of raising the interest and commitment of the trainees.

Also in Iraq in 2007, the US was already undertaking training of Iraqi military legal advisors when the Danish contingent arrived. and a Danish military legal advisor offered to teach a module focussed on the day-to-day work of a military legal advisor i.e. how to become relevant vis-à-vis the commander and broader Staff. One lesson learned in Iraq was that the more Socratic approach to training in which participants are expected to actively contribute and ask questions did not fare well. Rather, the participants listened, observed and took notes with very limited interaction. This example serves to illustrate that training and capacity development efforts must be tailored specifically to the local educational and pedagogical tradition. As with the other examples described in this paper, the trainer had no possibility of assessing the impact of the training provided as no monitoring or follow-up mechanism had been established.

The Danish Military Police has trained Iraqi counterparts throughout most of the Danish deployment. As the training likely always included code of conduct aspects and guidance around the use of force, this training can also be said to have addressed IHL and IHRL issues. In its current training mission in Iraq, Danish officers and troops tailor training and capacity development efforts to specific needs of each of the Iraqi contingents passing through for training, which may include IHL and IHRL elements if particular issues are identified. Most recently, a Danish Soldier's Card has been translated to Arabic as an example of how the Danish armed forces are codifying IHL and IHRL in a simple format to guide soldiers during their deployments. It does so, for example, by listing the ten basic principles in IHL. The Soldier's Card is now being used as an example of how

Danish soldiers are taught IHL when Iraqi officers are trained.

Experiences from Somalia

The Cutlass Express exercise sponsored by U.S. Africa Command (AFRICOM) focused on addressing piracy off the coast of Somalia through information sharing and coordinated operations among international navies. The Danish Absalon class command and support ship Esben Snarre served as the “target” in boarding exercises with soldiers from Kenya, Uganda and Tanzania. Members of the Danish Frogman Corps advised and guided the boarding soldiers and pointed out IHL and IHRL violations.

Experiences from Afghanistan

In Afghanistan, capacity development was undertaken in a range of different contexts. From the early stages of the Danish deployment, Danish military police conducted training of Afghan National Police (ANP). A national Rule of Law (RoL) strategy was eventually agreed upon but also prior to that, a capacity development strategy was devised at the district level in collaboration with the US and UK.

In the period 2011-2014, a Danish civilian stabilization adviser with a legal background, advised the Helmand Chief State Prosecutor and his staff (others countries focussed their support on the court and defence attorney systems) on a range of issues relating to IHRL including the right to counsel, detention rules and conditions, presumption of innocence, torture etc. The assistance combined a range of capacity development methods including coaching and mentoring, monitoring visits, trainings, and through observing court trials to later provide advice on issues. Most training sessions focussed on basic legal work such as criminal procedure; international treaties and conventions and their integration into Afghan law; and functions of the State Prosecutor’s office. When security allowed for it, at least one training session was held a week. The trainings were often delivered by external experts on Afghan law either from the Ministry of Justice in Kabul or NGOs such as the International Legal Foundation. In addition, the civilian legal adviser organised discussion sessions with the staff at the State Prosecutor’s office to debate and analyse new laws that had been passed or specific on-going cases. An example from 2013 was the decriminalization of women running away from, for example, forced marriages, which had previously been illegal. In many instances, women were still held in custody for having run away, and in those cases the State Prosecutor would now have to intervene.

During the monitoring visits, the advisers were particularly focussed on wrongful detention and incidents of torture. Due to poor crime scene investigation capacities and evidence custodianship and the resulting reliance on suspects pleading guilty, physical force was often applied.

Another innovative capacity development model for IHRL capacity development focussed on the informal legal structures in Helmand which draw on Pashtunwali’s structures of jirgas and shuras as bodies taking on the role of judges and the

role of the religious ulama and other influential stakeholders here within. Rather than having international experts lecture these stakeholders, they helped facilitate that afghan legal scholars could, for example, demonstrate the compliance between IHRL and Sharia law. In another instance, a women's rights leader demonstrated women's legal status by referring to passages from the Quran. This lecture was very well received by the all-men audience. The international advisers did not participate in these meetings to ensure genuine local ownership but observed how these meetings became more and more well-attended to finally include representatives from all districts in the Helmand Province.

The Danish Special Operations team trained a SWAT Team under the Afghan National Civil Order Police in Helmand that dealt mainly with counter-terrorism cases. They were assisted by a British military lawyer that trained Afghan forces in IHL and IHRL including on the use of force, intrusion, and detention. Ironically, the military lawyer also trained Western Forces on the legal procedures of Afghanistan and on respecting due process.

In Gereshk, it also included working with the city councils and local authorities (including army, police and intelligence units) for example in response to or to prevent human rights abuse cases. Denmark also co-funded the construction of a major justice centre in Nawa in the Helmand Province. While this initiative marked an attempt to develop a more permanent and accessible RoL capacity, the initiative encountered a range of issues around sustainability. Delivering electricity and other supplies, for example, turned out to be very complicated and the interviewee stated that he wouldn't be surprised if the use of the facility had been discontinued after the international forces seized the provision of supplies.

Denmark is also planning to support, in cooperation with UK, the Afghan National Army Officer Academy (ANAOA). The aim of the initiative is to develop officers' knowledge and skills including with respect to international humanitarian law and the protection of civilians and to integrate human rights concerns into tactics and operations. The training is delivered by the Afghanistan Independent Human Rights Commission (AIHRC) as a mandatory part of the officers' curriculum. According to recent accounts, the training has already started but the Danish military attaché in Kabul was investigating the status of implementation at the time of writing.

Prior to this throughout 2014 a capacity building program was undertaken for the staff of the Special Investigation Team and Monitoring and Investigation Unit of the AIHRC. The training was based on an agreement between the AIHRC and the Danish Ministry of Defense. Three extensive trainings were designed and delivered by the Danish Institute against Torture (DIGNITY) on the monitoring of detention centers and documentation of cases of torture. In their internal evaluation report, the AIHRC emphasized that the trainings had provided useful practical tools to monitor the treatment of detainees in accordance with International Humanitarian Law as well as the UN human rights system and international litigation.

Experiences from the Eastern African Standby Force

IHL and IHRL are also being integrated in training and operations by the Eastern African Standby Force (EASF) with the support of the Nordic Advisory and Coordination Staff (NACS) seconded to the EASF headquarters. EASF is a regional organisation consisting of 10 member states from the Eastern African region and comprises military, police and civilian components. The Standby Force was established in 2004 and declared full operational capability and its readiness to deploy in late 2014. The awareness and application of IHL and IHR has been implemented into EASF training manuals, courses and exercises so they constitute an integral part of EASF code of conduct as of today.

EASF conducts a variety of courses, which entails elements of IHL/IHR such as Civil Military Cooperation Courses (CIMIC), Protection of Civilians (POC), Protection of Children, AU Foundation Courses, etc. Furthermore, elements of IHL/IHR are included in various scenarios in different exercises that EASF is planning and conducting in order to demonstrate that the Standby Force can handle topics related to IHL and IHR in a professional and correct manner. EASF's Civilian component encompasses a variety of experts with special competences related to human rights and international law. The pledged forces (infantry battalions, fire support, other supporting units, police units, etc.) are confronted with scenarios including topics related to IHL and IHRL during their participation in EASF exercises. As the EASF has yet to deploy, there is currently no way of monitoring whether this training has had the desired effect.

KEY FINDINGS

This section presents the key findings of this paper grouped under 5 thematic categories to provide the reader with “easy access” to key observations.

Training design and modalities

- Training and capacity development efforts have to be tailored specifically to the local educational and pedagogical tradition. Visuals can be an effective tool in contexts with widespread illiteracy and linguistic barriers
- Most countries and security authorities do have an interest in adhering to IHL but are less keen on human rights laws, which are seen as less applicable to their operations and more (foreign) value-driven. IHRL thus need to be integrated into training in very practical and actionable ways
- Offering trainees diplomas or certificates of completion has proven an effective incentive to attract participants and to ensure active participation
- For domestic training as well as external capacity development, exercises have proven are the best way of internalizing IHL and IHRL principles to ensure that tactical decisions are compliant with IHL and IHRL principles
- There is often a need for follow-on activities to training such as refresher training, joint patrolling or on-going coaching and mentoring to ensure compliance

- Initiatives must be extremely context-specific and must reflect the needs of local actors

Knowledge capturing and hand-over

- There is a need for improved hand-over structures and knowledge capturing. This could include physical overlap between departing and incoming capacity developers as well as an interest from the institutions involved to capture lessons learned and ensure their integration in future initiatives.
- The rapid rotation also challenges efforts to build and sustain trustful relations with counterparts. Establishing trust takes considerable time and must be restarted every time new persons arrive.
- IHL/IHRL training and capacity development initiatives are largely disjointed and ad hoc in nature. Some respondents therefore suggested that establishing a community of practice spanning military legal advisors and relevant officers across bilateral, coalition, and UN campaigns, could be a useful way of ensuring knowledge sharing.

Skills and resources

- Many legal experts, including military advisors, are not (capacity) development experts. Working in a developing country requires entirely different skillsets and approaches, which have to be learned and refined. Respondents therefore suggested that development experts could help advise military and civilian legal experts on their capacity development efforts within IHL and IHRL.
- Respondents also recommended enhancing the preparation and pre-deployment training of personnel involved in IHL and particularly IHRL capacity development. Examples from Afghanistan and Iraq demonstrated the need to understand the local context, traditions, culture and formal and informal legal systems in order to “hit the ground running”. Not knowing the local language had also turned out to represent a significant challenge.

Strategy and frameworks

- In order to ensure adequate continuity, respondents stressed the need for a directive from the capital level tasking the deployed force with undertaking and monitoring IHL and IHRL training and capacity building and to assess the impact thereof.
- Because of the rapid rotation of contingents, respondents also highlighted the need for a long-term strategy and plan/framework that consecutive contingents can work under. In many instances there had been limited understanding of what goals, if any, IHL and IHRL capacity building efforts were supposed to lead to i.e. what the expected end result should/would be.
- The force ceiling often means that capacity building is not prioritised vis-à-vis other military tasks.

- Coordination of IHL/IHRL and broader RoL efforts is also challenging. In both Afghanistan and Iraq, IHL and IHRL initiatives unfolded in the context of numerous parallel and often uncoordinated initiatives involving both bilateral and multilateral stakeholders.

Impact and sustainability

- Respondents highlighted the importance of assessing the capacity to absorb knowledge (and relevance of what is being taught) and the capacity to sustain and maintain, for example, physical installations.
- None of the explored initiatives had applied actual monitoring and evaluation systems. The absence of baseline data, on-going monitoring and assessments of the impact of initiatives makes it extremely challenging to document results.

TRAINING AND BACKGROUND RESOURCES FOR IHL AND IHRL

This is a non-exhaustive list of some the resources (guidance, training materials, manuals etc.) on IHL and IHRL that can help inform training and capacity building efforts.

- Materials developed by the International Committee of the Red Cross
- International Legal Protection of Human Rights in Armed Conflict, OHCHR
- The U.S. Army Judge Advocate General’s Legal Center and School Rule of Law Handbook
- The United States Joint Forces Command Handbook for Military Support to Rule of Law and Security Sector Reform
- The Danish Military Manual (forthcoming)
- The US military manual (for IHL)
- The Joint Service Manual of the Law of Armed Conflict (United Kingdom)
- Fighter not Killer app for smart phones and tablets
- Course materials on training in International Humanitarian Law from the Peace Operations Training Institute
- Hand book on IHL, developed by Danish Red Cross (Røde Kors)