

 <p>Bundesministerium der Verteidigung</p> <p>Federal Ministry of Defence</p>	 <p>OSCE ODIHR</p> <p>OSCE Office for Democratic Institutions and Human Rights</p>	 <p>DCAF</p> <p>Geneva Centre for the Democratic Control of Armed Forces</p>
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## **Citizen in Uniform: Implementing Human Rights in the Armed Forces Berlin 7-8 September Conference Report**

### **Introduction**

A conference entitled “Citizen in Uniform: Implementing Human Rights in the Armed Forces” was held in Berlin on 7-8 September 2006. There were 56 participants from across the OSCE region, including representatives from ministries of defence and foreign affairs, armed forces, parliaments, national human rights institutions, and international and non-governmental organizations.

The conference, hosted by the German Federal Ministry of Defence and jointly organized by the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), was the first in a planned series of events aimed at providing an opportunity for OSCE participating States to explore different approaches to the protection of the human rights of armed forces personnel. The goal of the conference was to encourage higher common standards relating to the human rights of armed forces personnel.

The underlying theme of the conference was that, as *citizens in uniform*, armed forces personnel are entitled to the same rights and freedoms as all other people, subject to certain limitations imposed by military service. The conference focused on three approaches: commanders’ responsibility, individual accountability, and oversight institutions.

### **Welcome and Opening Session**

The session was chaired by **Prof. Dr. Reiner Pommerin**, Chairman of the Advisory Board on Leadership Development and Civic Education of the German Federal Ministry of Defence.

Vice Chief of Defence of the German Ministry of Defence **Lt. Gen. Johann-Georg Dora** opened the conference by speaking about the significance of the “citizen in uniform” concept for the German armed forces. The German constitution grants equal rights to all citizens, whether military or civilian. This concept is also reflected in the leadership philosophy of *Innere Führung*, which ensures that soldiers of the armed forces are integrated into social, public, and political life. Lt. Gen. Dora emphasized that the changing nature of the tasks assigned to the military, which increasingly include international missions, require that soldiers have a solid ethical outlook based on human dignity, human rights, morality, and tolerance. This requires that soldiers themselves be recognized and treated as full citizens with the same rights and obligations as any other citizen.

In his welcome address, ODIHR Director **Ambassador Christian Strohal** reiterated that, as citizens in uniform, armed forces personnel are entitled to the same human rights and

fundamental freedoms as all other citizens. He explained that any limitations on human rights must be provided for by law, must be consistent with international treaty obligations, should be applied in an exceptional manner and should be strictly proportionate to the intended aim. Ambassador Strohal also spoke about the ODIHR's activities to promote human rights in the armed forces, notably the project to produce a handbook based on best practices from the OSCE region on how military structures can successfully integrate respect for human rights without compromising military efficiency.

The welcome address by DCAF Director **Ambassador Theodor H. Winkler** focused on the importance of the citizen-in-uniform concept as an essential mechanism for safeguarding the democratic control of armed forces. The concept helps to prevent the military from becoming a state within a state by the adoption of laws, policies, and a military mindset that underlies the integration between the armed forces and society. Ambassador Winkler outlined three key challenges facing the concept: 1) the apparent paradox between the integration of the military in the democratic order with military readiness, command, and hierarchy; 2) the impact of the professionalization of armies in Europe; and 3) the impact of new missions abroad.

**Session 1: Citizen in Uniform: Overview and Issues**, chaired by Ambassador Winkler.

In his presentation, **Brig. Gen. Karl H. Schreiner**, Director of Faculty, Armed Forces Command and Staff College, outlined the key features of the *Innere Führung* philosophy. After the end of World War II, a realignment of the internal structure and self-image of the new German armed forces was required. The concept of *Innere Führung* developed in the 1950s aimed at creating, against the background of the era of totalitarianism, a soldier who would staunchly and steadfastly defend the values of the democratic constitution. Founded on the principle of human dignity, set out in the Basic Law, *Innere Führung* is: 1) an integration concept, shaping the internal organization of the armed forces and the relations between the armed forces, the state, and society; and 2) a leadership philosophy, setting ethical standards and providing soldiers and military leaders with a code of conduct. The *Innere Führung* principles are binding on all military personnel at all times and especially on superior officers, who should set examples of good behaviour for their subordinates. *Innere Führung* requires that any differences between the armed forces and the civilian environment be confined to the extent that is required by military necessity. Schreiner emphasized the continued relevance of *Innere Führung* today, especially in light of the increasingly diverse tasks and missions assigned to the military in the 21<sup>st</sup> century.

**Prof. Peter Rowe** of Lancaster University noted that the understanding of the term citizen in uniform was likely to vary among the OSCE participating States in the same way as their armed forces differ in terms of their history, traditions, and development. Professor Rowe pointed out that the concept could not refer solely to conscripted soldiers but must also apply to volunteers since the state was unlikely to accept that the rights and duties of both classes of soldier differed so fundamentally. One consequence of the adoption of the citizen-in-uniform concept was to ground the army within society so as to prevent it from being seen as a tool to be used by the sovereign or government to oppress the civilian population. Ensuring adequate control by the civilian government over the armed forces would also mitigate any likelihood of the army being used for unlawful purposes. Finally, it would also protect armed forces personnel themselves from abuse from within the military ranks. Professor Rowe argued that the term citizen in uniform only goes so far, as it does not explain what restrictions on the rights and freedoms that a civilian might enjoy are justified for a soldier. Each country has to find its own balance within the framework of international human rights obligations. The European Convention for the Protection of Human Rights and Fundamental Freedoms provides that states have the obligation to secure for everyone within their jurisdiction the rights and freedoms set out in it. The European Court of Human Rights has, however, taken the view that, when applying the Convention's rules to military personnel, rights and freedoms must be considered within the context of military life. Thus, in some states,

members of the armed forces may be tried by military courts for crimes under ordinary criminal law or for offences contrary to the military code of discipline; their freedom of expression may be restricted in order to secure the proper functioning of the armed forces. In considering which restrictions are legitimate, the key issue is the balancing of the perceived need for military efficiency in relation to operational effectiveness against the rights of the soldiers themselves. It is likely that, in future cases before the European Court of Human Rights, the justification for differential treatment of soldiers will come under increased scrutiny. The growing trend is to keep any restrictions on human rights to a minimum.

During the discussion session, one participant suggested that limitations on the enjoyment of human rights should be based on duties within the military and not merely on membership of the military itself. It was noted that ensuring respect for human rights within the armed forces was in turn likely to promote respect of human rights by armed forces personnel during operations. It was recognized that the armed forces may have certain traditions, but that one should look at these carefully so as to avoid what was called the “dead hand of tradition”. Experience has shown that traditions that had been considered important to military effectiveness before have been found unnecessary after being abolished or changed on human rights grounds. In fact, it has been recognized that the quality of armed forces has often improved after changes made on the basis of human rights considerations. It was also pointed out that a reputation for the proper treatment of soldiers may help to attract more people to serve in the armed forces.

**Session 2: Reconciling Human Rights and Military Readiness: Comparative Examples from the OSCE Region** (panel discussion), chaired by Ambassador Strohal.

The questions posed to the panelists are annexed to this report.

Noting that there are considerable differences within the OSCE region in the respect and dignity accorded to military personnel within the armed forces, **Prof. Dr. Pommerin** stressed in his introduction that the protection of human rights of armed forces personnel was shaped by the society around the armed forces.

**Maj. Gen. (ret.) Karlis Neretnieks**, Researcher and Advisor on Security-Sector Reform, Swedish National Defence College, pointed out that, contrary to the perceived conflict between human rights and combat effectiveness, respect for human rights actually serves to increase combat effectiveness. Maj. Gen. Neretnieks outlined three ways of creating a military culture based on respect for human rights. First, the attitude of officers should be moulded to emphasize the welfare of the individuals under their command, training them in developing a sense of justice, self-discipline, and in leading by example. Second, obedience should be fostered not by big penalties but by small sanctions. Third, an atmosphere of mutual trust and interdependence would be fostered by creating a system of delegated authority and personal initiative. The creation of such a culture would make any abuse disappear by itself, without the need for a comprehensive system of rules.

**Prof. Dr. Ioan Mircea Pascu**, member of the Romanian Parliament and observer to the European Parliament, spoke about the need to look at the issue in a larger perspective, with the need for a balance between the societal need for security on the one hand and civil liberties on the other. Soldiers are also faced with the multiplication of their duties, which makes their role all the more difficult.

In the lively discussion that followed, it was noted that different skills were needed for the increasingly diverse tasks that soldiers are required to perform (particularly on international missions). The importance of having the necessary funding to support the changes was mentioned. One participant noted that, if officers and soldiers are not paid, they may resort to

illegal activities to get income and that it was therefore the responsibility of parliaments to make sure that salaries were paid.

On the question relating to “selective” conscientious objection, the divergent views reflected the different national approaches. Some held the position that the decision whether or not to participate in a mission should not be “a la carte” for soldiers. Another approach mentioned was the possibility of withholding the standard bonus if a soldier refused to go on a mission abroad. The importance of providing channels for open discussion of such objections was suggested as a useful strategy.

On the question of bullying, the importance of an independent legal system that can deal with such violations was highlighted. Others felt that, in the first instance, it was the responsibility of the chain of command to deal with problems of abuse. It was also noted that officers need to play an active role in preventing abuse by not leaving soldiers alone and unsupervised. Since initiation ceremonies may serve a special purpose in the military, trying to ban them may be ineffective, but an alternative strategy is to steer troops to non-abusive forms of initiation. The role of the media in stimulating a debate about soldiers’ conditions was also mentioned. However, though the press was considered important, reports of abuse will go unheeded unless the military itself thinks bullying is unacceptable.

The role of civil society and national human rights institutions in helping to introduce the concept of human rights into the military was also highlighted. It was pointed out that, in many countries, it was standard practice for the military to meet regularly with NGOs that are also involved in conducting training before the military goes abroad.

**Session 3: The Parliamentary Military Ombudsman Function: the Example of Germany**, chaired by Brig. Gen. Robert Bergmann, Deputy Chief of Staff, Personnel and Training, Armed Forces Division I, German Ministry of Defence.

**Mr. Reinhold Robbe**, Parliamentary Commissioner for the German Armed Forces, provided an overview of the role his office plays in safeguarding the rights of armed forces personnel. Provided for in the Basic Law, the parliamentary commissioner is an organ of the German Parliament and operates in close contact with the Defence Committee. The parliamentary commissioner can take action on two bases: upon instruction from the Parliament or the Defence Committee to investigate specific cases; or on his own initiative and exercising his discretion when circumstances come to his attention that suggest a violation of the basic rights of a member of the armed forces or the principles of *Innere Führung*. In carrying out his constitutional mandate, the parliamentary commissioner has the power to demand access to information, to hear witnesses and experts, and to make proposals and recommendations. He also has the right to visit military premises without prior notice. Armed forces personnel may present a petition directly to the parliamentary commissioner without going through the official channels. The parliamentary commissioner submits an annual report to the Parliament, which is used in particular by the Defence Committee, as a basis for discussion of, and decisions on, the internal development of the armed forces. Commissioner Robbe offered his assistance in providing support in case of the establishment of such an institution in other OSCE participating States.

In his presentation on the relevance of independent complaint mechanisms and the ombudsman function for armed forces personnel, **Prof. Ian Leigh**, Professor of Law at the University of Durham, outlined the advantages and disadvantages of four distinct models: where grievances are dealt with directly by the command structure; where a civilian ombudsman also deals with military matters; where the ombudsman is part of the military structure; where there is an independent military ombudsman. The advantage of an independent ombudsman for the military is its independence from the command structure, which makes it credible in the eyes of all stakeholders. Such an ombudsman is exclusively

devoted to military matters and therefore develops specialized knowledge in the field. The existence of a military ombudsman also enables greater transparency and accountability within the military.

In the discussion session, one participant noted that civilian ombudsmen dealing with military issues were less effective than specialized military ombudsmen, primarily in light of the high number of cases that they have to address. It was also mentioned that the ombudsman is an important instrument not only for soldiers but also for the chain of command since it is able to promote changes in policy unlikely to happen without his/her intervention. The importance of the independence of the ombudsman was stressed, and it was pointed out that, although military experience may be an asset for a military ombudsman, this may be outweighed by the relatively higher degree of independence of an individual with a civilian background. This higher degree of independence will be recognized by potential complainants, which may give them a greater degree of confidence in the complaints system. It was also pointed out that military ombudsmen should have security of tenure, and that there should preferably be a firm basis in the law guaranteeing this. Though a degree of resistance to the establishment of a military ombudsman institution may initially be felt by commanders, experience has shown that, once such an institution has been established, top commanders have come to value the practical improvements to the armed forces brought by the work of such institutions. In order to protect the integrity of the complaints procedure, it was pointed out that individuals complaining of abuses should be protected from retribution for speaking out. Individuals within the chain of command should be sanctioned if they retaliate against those making complaints. Experience has shown that it is better to have a separate military ombudsman institution than to integrate military affairs within a general ombudsman institution, as its recommendations are more likely to be acted upon than if they are part of a general report by the national ombudsman. It was also noted that it was important for soldiers to be made aware of the various procedures for complaints, whether to the ombudsman or to other individuals or institutions. The establishment of an ombudsman institution, it was pointed out, could be seen as an important link between armed forces personnel and the civilian leadership, and could serve as a valuable tool for the latter in learning more about the practicalities of military life and the challenges facing soldiers.

**Session 4: The Parliament's Role in Protecting the Human Rights of Armed Forces Personnel**, chaired by Mr. Rolf Clement, journalist and member of the Advisory Board on Leadership Development and Civic Education of the German Federal Ministry of Defence.

**Ms. Ulrike Merten**, member of the German Parliament and Chairwoman of the Defence Committee of the German Parliament, gave an outline of the German Parliament's role in overseeing the armed forces. According to the German constitution, the minister of defence is commander-in-chief of the armed forces and only in a state of defence would this power be transferred to the federal chancellor. By vesting the federal minister of defence with the highest military command authority, civilian control of the military is ensured. The federal minister of defence himself, like the entire federal government, is subject to continuous parliamentary oversight. It is hence in the person of the civilian minister of defence that the primacy of politics ultimately manifests itself: externally as the accountable bearer of responsibility vis-à-vis parliament, internally as the commander-in-chief of the armed forces vis-à-vis the military leadership.

Ms. Merten explained that, when developing the Legal Status of Military Personnel Act, one example of the military legislation introduced by Parliament, the challenge for Parliament lay in resolving the conflict between fulfilling the mission of the armed forces on the one hand and maintaining the civil rights of military personnel on the other. It is Germany's position that a soldier who is obliged to defend the free and democratic constitutional order must be given the possibility of participating in the shaping of this order and its effects on citizens. As

a consequence, armed forces personnel are not only allowed to be members of political parties and associations but also have the right to vote and the right to stand for public office.

Ms. Merten also spoke about the role of the Defence Committee of the German Parliament as an important instrument of parliamentary control over the armed forces. Its particular importance is that it is the only committee that has the authority to conduct investigations. It may request written or verbal reports or other information from the Ministry of Defence. It has the right to demand the presence of the federal minister of defence at a meeting. In practice, this procedure is the most frequently used instrument by the Defence Committee in the exercise of parliamentary oversight.

In his presentation, **Dr. Hans Born**, Senior Fellow, DCAF, underlined that Parliament's role in overseeing the military depends on its general powers and abilities to keep the government accountable. He distinguished four types of parliaments: transformative parliaments (able to alter government policy); arena parliaments (which have only informal powers such as public debates to alter government policy); new parliaments that still do not have the routine and resources to check government policy; and rubberstamp parliaments that have no powers whatsoever to keep governments accountable. In the context of human rights of armed forces personnel, Dr. Born stressed that parliaments should not ignore human rights within the armed forces as an internal problem for the military leadership. On the contrary, he underlined that parliamentarians should build up cross-political-party consensus for dealing with human rights violations, incorporate human rights of armed forces personnel into the mandate of parliamentary defence committees, enact relevant legislation, and conduct regular reviews of policy and legislation.

A participant noted that parliamentary defence committees should insist on transparency and openness on issues such as bullying and pointed out the importance for defence ministries to be frank about such issues.

### **Closing Remarks**

In his concluding remarks, **Professor Leigh** stated that the examination of *Innere Führung* had been valuable and instructive. It had demonstrated the importance in protecting the human rights of members of the armed forces *both* of institutions (such as the commissioner) and of ethos – they were not alternative approaches, but rather, complementary.

Other countries have equivalent concepts to *Innere Führung*, although the precise content varies, as, for example, over whether there is a distinct system of military courts. The important issue is that differences between the rights accorded to citizens at large and to members of the armed forces should be rationally defensible and that any limitations on the latter's rights should be proportionate to genuine military needs. Professor Leigh referred to the test of proportionality under the jurisprudence of the European Court of Human Rights as giving a valuable method for testing such restrictions.

It was clear from the examples shared by speakers and delegates that it is possible to reconcile protection of human rights with military discipline. The German experience has been very positive: human rights recognition *has contributed to* military effectiveness within a democracy and does not detract from it.

**Dr. Born** briefly mentioned the joint ODIHR-DCAF project to produce a handbook on human rights and fundamental freedoms of armed forces personnel, a project that is not trying to set new norms but is trying to illustrate them. It takes the OSCE Code of Conduct on Politico-Military Aspects of Security as a starting point and will discuss how human rights can be successfully implemented in military structures by presenting a number of different approaches from across the OSCE region.

In his closing remarks, **Mr. Toralv Nordbo**, ODIHR Deputy Director, stressed the importance of this conference in contributing to furthering the common thinking on the issue of human rights and fundamental freedoms of armed forces personnel. In particular, Mr. Nordbo said that the exchange of national practices has been of great value. Mr. Nordbo informed participants about the upcoming roundtable in Bucharest on Military Unions and Associations and urged other states to host such events. He also thanked the German hosts for organizing and funding this conference and for sharing their national experience.