

Session 2: The Armed Forces in Domestic Security: Implications for Ombuds Institutions

Domestic Security Provision

The differentiation between internal and external security, and between police and military, has been a core principle of the modern nation-state. In a conventional understanding of the roles and responsibilities assigned to each public body, the provision of domestic security has traditionally fallen outside the reach of the armed forces. As such, their increasing involvement in maintaining domestic security is a relatively recent phenomenon, presenting a significant challenge to deep-seated assumptions and expectations on their function, legitimacy, and purpose.

Historically, the scope of military internal engagement would rarely extend beyond maintaining public order within traditional types of security threats. Nowadays, on the other hand, involvement in domestic security refers to an ever-ongoing variety of tasks, such as domestic counterterrorism, support for major public events, intelligence gathering, drug enforcement, and crime investigations. A case in point is offered by Germany's highest court which, in August 2012, made the groundbreaking decision of reversing long-standing restrictions on the internal functions of the armed forces, practically granting permission for their internal deployment as a measure of last resort in states of emergency of catastrophic proportions, which includes terrorist attacks. At the other end of the spectrum, Belgium has responded to internal threats by deploying the army to help protect public spaces for decades.

The first reason behind this "non-traditional" type of engagement is the demand to assist the delivery of services normally provided by civilian public services and government agencies, when required. In addition, the armed forces have the ability to deliver experienced personnel and advanced equipment in a timely manner. As an example, during an escalation of violence in numerous provinces of South Africa in 2008, the Ministry of Safety and Security requested the domestic deployment of the South African National Defence Force to support the overstretched police in containing unrest. Third, the armed forces can serve as a national unifying mechanism that reaches across all sections of society and impart in citizens a sense of national conscience and unity. This has been notable in various moments of perceived crisis, such as during the safe rescue of the boys trapped in a cave in Thailand with the military embodying a sense of nationally shared sacrifice and responsibility.

Risks and Opportunities

By using the armed forces for domestic law enforcement, the line dividing military from civilian tasks and authority may become blurred. The consequences – as critics argue – could be twofold. First, it might have the effect of militarising existing civilian law enforcement structures. Second, it could potentially undermine and weaken the same civilian institutions in favour of the armed forces, by directing resources and authority away from domestic security providers to the military. On the other hand, supporters of their increased mandate believe that deploying the armed forces in situations necessitating heavy weaponry and specialised technology represents an effective means to prevent heightened militarisation of regular domestic security forces. Moreover, it is expected to trigger greater public and legal scrutiny of their use. Whether in favour or against, the risks and opportunities arising from the armed forces' expanding provision of domestic security invariably have implications for the efficient functioning of ombuds institutions.

Ombuds Institutions

In domestic security provision, ombuds institutions can serve a key function in many areas, such as:

- ❖ *Legal mandates:* In many countries, the armed forces are bound by different penal codes and justice systems compared to those of their civilian law enforcement counterparts. The divergence in legal mandates may result in disagreements between the armed forces and other public bodies in the definition of roles and responsibilities, as well as confusion in assessing which legal framework should be privileged in case of clashes. Furthermore, legal mandates themselves need to be reconsidered and adjusted to fit different scenarios. In the case of Italy in 2008, 3,000 military personnel were assigned domestic law enforcement powers in support of police patrols to combat crime. However they were not empowered to make arrests directly, resulting in a potential conflict between their mission and their legal mandate to carry out that mission. Ombuds institutions are tasked with promoting a clear delimitation of the powers attributed to the armed forces, in order to bridge the gap between the military judicial system and that of civilian law enforcers.
- ❖ *Technical support:* The rationale behind the deployment of the armed forces in situations of emergency or crisis is their comparative advantage in terms of possession of the proper equipment, skills, experience and manpower, as well as access to all parts of the country. However, a very different set of skills is required in interacting with civilians in the military's own country. When armed forces personnel are imbued with inadequate internal security training or their domestic functions are perceived as inappropriate, the public's trust in the armed forces is at risk of erosion. For example, *Opération Sentinelle*, a French military operation seeing the deployment of 10,000 soldiers across the country's territory in the aftermath of a series of terrorist attacks in 2015, has been raising doubts over the operation's effectiveness in protecting civilians. As the military was the designated targets of six terrorist attacks in the span of two years, critics have argued that military personnel, patrolling past schools, markets and other crowded areas, mostly endanger the civilian population. Ombuds institutions should intervene in time for this type of unfortunate circumstances not to take place, ensuring that, in addition to the experience gained on the field against hostile counterparts, the armed forces are guaranteed appropriate training to gain relevant skills and competencies in dealing with the same civilians they are expected to protect.
- ❖ *Complaints function:* As opposed to those deployed in external defence capacity, a very different set of complaints is brought forward to ombuds institutions by armed forces personnel stationed internally for domestic security purposes. Additionally, as the armed forces engage more frequently with civilians, ombuds institutions should reconsider their mandates to allow civilians to file complaints and obtain adequate remedies.

Questions for Discussion

1. Do the armed forces personnel in your country conduct domestic security or law enforcement activities? Under what circumstances?
2. Is there a legal framework defining the role and scope of the activities of the armed forces when deployed for internal security purposes?
3. Can your office receive complaints from civilians about armed forces personnel? Have any such complaint be filed?
4. What are the most common problems faced by armed forces personnel? Has your office received complaints from armed forces personnel regarding these problems?
5. Can the police forces file complaints to your office as well about military personnel? Has your office developed cooperative mechanisms with civilian law enforcement? If yes, which were the biggest problems encountered by your office and how did your office overcome them?