

Mister Chairman,  
Distinguished colleagues,

Allow me to thank you for the opportunity I have to participate to this second international conference.

It goes without saying that the continuation of the German initiative in 2009 is indeed an excellent idea since this platform allows us all to learn from the experiences of a great number of countries. Especially since some of the participating nations have already a long experience in ombudsman-affairs.

I would like to focus during this short exposé only on the freedom of speech and I have the intention to give some food for thought by explaining how the Belgian legislator and the Belgian Armed Forces deal with the items which could lead to interventions with the ombudsservice and in some cases have already done so.

### **Concerning the freedom of expression.**

You have to know that the members of the Armed Forces do have the same fundamental rights, including the freedom of speech, as every other citizen in a democratic society.

In this democracy, a professional army can not accomplish its missions in a normal way if it doesn't have the approval and the support of the population. Correct and quick official information about its activities help to acquire this approval and support. Every member of the armed forces can help to achieve this when he is asked to speak to the media within his speciality as a soldier and if this is asked by the authority responsible for the relations with the media. In that case, he is an official spokesman and relates the point of view of the department to a specific question or topic.

Also every member of the department has the right to give his own opinion and ideas by giving interviews, participating in conferences and debates or by writing books, articles and by giving information on Internet sites.

This right is for the military, in accordance with international treaties (Treaty of Rome – Art 10 / Treaty of New York - Art 19), however restricted by a number of legal dispositions in the interest of the states' security, the territorial integrity and the public safety. The right is also restricted when it comes to confidential information (for instance: an ongoing operation).

Apart of these restrictions, the military personnel do have the right to give their opinion at all times and by any means. No authorisation is needed from any authority whatsoever. When the member of the military personnel chooses to express himself, he must however make it clear that he speaks not as an official spokesman of the department, but in his own name.

The military also know that they are responsible for their words and can be prosecuted in court or sanctioned by the military authority if they abuse of these rights.

Now, which restrictions are we talking about?

There are some permanent restrictions where the military personnel:

- must be respectful towards the head of the state, the parliament and the institutions of the State;
- must do everything to avoid that the dignity of the military function or status is destroyed;
- must be honest and respectful towards their superiors;
- must defend the moral and material interests of the state.

what is more, it is forbidden for the military:

- even when they have left the active duty, to give away any secret or confidential information to persons which are not entitled to know;
- to take part in political activities within the department of Defense;
- to go on strike;
- to publicize opinions which undermine the discipline or affect the trust of the nation in the armed forces;
- to publicize opinions which endanger the political impartiality of the armed forces;
- to publicize opinions which disrupt the public safety;
- to publicize documents which violate the right of privacy and medical secrets;

It is clear that restrictions which are imposed to every citizen are equally applicable for the members of the armed forces (such as: obscenities, racism, etc ...)

And what about wartime?

Do military keep the same rights of freedom of expression as during peacetime?

Well, there still is a royal decree which was voted in 1916 which still imposes restrictions concerning the publication of newspapers, brochures, writings, drawings, etc ... of things which could help the enemy or influence badly the moral of the own troops or population. The government can impose the appropriate measures to abolish these publications but only during wartime.

And during operations in peacetime and humanitarian operations?

Here, we are not talking about “wartime”, which is a specific situation declared by the government. Peaces keeping operations or peace enforcing operations are defined as

“peacetime operations” and “crisis response operations”. Can the legislator then restrict the right of freedom of speech? Clearly “no” but the advice is given to the military personnel to be vigilant and leave the external communication, meaning the relations with the press and the media, to the official designated communication specialist such as the PIO.

We also have civilian personnel within our units. And some of them are deployed abroad (For example some legal advisors). What about their freedom of speech, their freedom of expression.

One can say that these civil servants are submitted to the same restrictions as the military personnel. So there is no difference for them.

Allow me to come back to the operational situation abroad.

The operations abroad are crucial for the image which the population has of the department and the international media are more and more interested in what we do during these operations since the news value is high for the regions where there is turmoil and upheaval. The number of contacts between the people of the media and the military are increasing. It is therefore important that the communication is handled in an efficient, professional and coherent way.

This does not mean, and I insist repeating, that the military do not have the right of freedom of expression. But the military authority prefers to be careful.

And they have a good reason. For example: what if we have some injured or diseased military during an action with an IED? Do we allow the soldiers to communicate by mail, telephone, or other real-time means or do we restrict the communication at least until the family of the people concerned are informed by the military authority. One could easily imagine the reaction of the family if they learn by means of the media that their loved one is injured or worse.

The military authorities organize courses to attract the attention of the members of the department to the fact that they are entitled to the right of the freedom of speech. There the attention is equally drawn on the restrictions during operations and to the potential danger of speaking to the media. These courses are often organized during the academic sessions given at the military schools for NCOs and officers. On a regular basis, “refreshing information sessions” are organized for troops which are preparing a deployment abroad.

Some soldiers already contacted the complaints service in an informal way to ask if these courses were legal. If the authority can “restrict” their freedom of speech. It is not easy to keep the balance between informing, imposing restrictions and giving the impression of being manipulative (for the perception for some people becomes sometimes their reality).

To conclude, I would like to stress on the fact that this subject has only provoked two telephone calls during a period of two years. One came from a member of the chain of command in a combat unit, the other came from a union delegate in a logistics unit, who sent an e-mail to all the people of his unit (by military mail and using a military network and computer) and who was reprimanded. So I think that in my country, this is not an issue.

But this matter could certainly lead to a debate in this conference.

This, Mister Chairman, concludes my intervention on this topic.