

Challenges to protecting the rights of Armed Forces personnel in multinational operations

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Introduction: Today I will speak about the legal frameworks which provide the protection of human rights for deployed U.S. armed forces personnel, the role of the Ombudsman type institutions, and the main challenges and obstacles for providing these protections to service members serving abroad.

What is the legal framework for the protection of the rights of armed forces personnel in deployments abroad?

The legal framework for the protection of the rights of armed forces personnel in deployments abroad are rooted in the U.S. Bill of Rights, the Uniform Code of Military Justice, U.S. laws, and various military regulations.

U.S. military members are afforded the rights and freedoms found in the U.S. Bill of Rights, which includes among other freedoms, the freedom of speech, the freedom of religion, and the right to be secure in their person and homes against unreasonable searches.

The Uniform Code of Military Justice (UCMJ) is the foundation of military law in the United States. It was established in 1951 and includes articles of conduct, ethics, and morality that all U.S. service members must obey. The UCMJ only applies to U.S. military personnel and not the civilian citizens of the United States.

U.S. laws such as the Civil Rights Act of 1964 ensure all citizens, to include those deployed in foreign countries, are not discriminated against based on their race, gender, national origin, age, religion, or disability.

The U.S. military also has various military regulations that provide protections for service members. Perhaps the most publicized is Department of Defense Directive 7050.06, *Military Whistleblower Protection*, which protects the freedom of members of the Armed Forces to communicate with a Member of Congress or an Inspector General (IG), and protects them from reprisal if they do.

In addition to these legal frameworks, all Commanders, leaders, and supervisors are required to (1) ensure all personnel under their jurisdiction are informed of their right to register complaints with, or request assistance from, an Inspector General, and (2) ensure that persons registering complaints with any Inspector General are afforded protection from reprisal actions as a result of their contact with the Inspector General.

**What is the role of the Ombudsman in protecting human rights of armed forces personnel abroad?**

I will now address the role of the Inspector General in protecting human rights of armed forces personnel abroad.

The U.S. Department of Defense does not have an “Ombudsman” system, but a very similar system referred to as the “Inspector General.” The Inspector General has three primary functions which are (1) inspect, (2) investigate, and (3) provide assistance. This assistance function is most similar to the Ombudsman system.

The U.S. Inspector General inspects to ensure functions and systems are in compliance with applicable standards. We review allegations to determine whether they are credible and warrant an investigation. Assistance is the Inspector General function that provides service members the ability to seek help on matters affecting their health, welfare, and personal readiness.

The role of the U.S. Inspector General is to serve as a confidential advisor and fact-finder to the commander. The Inspector General’s sphere of activity includes everything for which the commander is responsible for and over which the commander has authority.

Our role in protecting human rights for our armed forces personnel is primarily embedded in the functions of investigations and assistance. For example, during an investigation, we are mandated to notify a subject or suspect that they have the right to remain silent, they have the right to speak with an attorney, and they have the right to not incriminate themselves. To ensure these rights have

been provided, we are required to obtain the subject's or suspect's signature before conducting an interview to ensure they understand these rights.

As previously noted, Department of Defense Directive 7050.06, *Military Whistleblower Protection*, states that members of the Armed Forces shall be free to make a protected communication and no person shall restrict a member of the Armed Forces from making lawful communications to an Inspector General. If a service member in a deployed location, anywhere in the world, witnesses what he or she believes to be a violation of law or ethical standards; fraud, waste, or abuse of authority can report such conduct through his or her chain of command, respective Inspector General, or directly to the Department of Defense Hotline. The "Hotline" was established to ensure any service member in the world could make a protected communication by e-mail or telephone.

While the role of the Inspector General may be slightly different from the Ombudsman, there is a core basic responsibility we share which is to serve as an advocate for the rights of service members in our Armed Forces.

Service members may need assistance from an Inspector General when their rights are being infringed upon. Inspectors General must remain impartial and never attempt to justify wrongful actions by a service member. Rather our role is to ensure that the service member is afforded "due process" without denial of any of their basic rights.

**What are the main challenges and obstacles for the effective protection of the rights of armed forces personnel in deployments abroad, specifically extraterritoriality and multi-nationality?**

While there are many commonalities between Armed Forces of different nations, many of the challenges and obstacles for the protection of the rights of deployed U.S. service members typically occurs when they are exposed to an environment with different national laws and serving with co-workers who have different military justice systems.

Service members in multinational operations should attempt to understand the customs and courtesies of other nations so they can serve together in a cohesive manner.

As noted earlier, any U.S. service member can submit a complaint or allegation to an Inspector General. In the instances that I've received allegations from U.S. service members in a multinational environment, it has typically been from female service members who felt they were harassed, and in two instances, assaulted. What typically happens is the Senior National Representative from the U.S. speaks with the Senior National Representative who has authority over the person who allegedly harassed or assaulted the female service member. No legal action typically occurs and the other service member is sent home early for national duties. While this is expedient, it does not address the issue and may reward misconduct.

For those U.S. service members who serve in the North Atlantic Treaty Organization (NATO), there is not an Inspector General assigned to NATO and our office, the U.S. European Command typically receives all complaints and allegations from U.S. service members assigned to NATO. For those U.S. service members serving in multinational operations, the Uniform Code of Military Justice and all applicable military standards and regulations remain enforceable.

### Closing

In closing, members of the Armed Forces have basic human rights which should be recognized and adhered to. This is especially useful knowledge when working in a multinational environment (such as NATO, Partnership for Peace, or United Nations) and understanding your co-workers and subordinates, regardless of nationality, are afforded basic human rights based on: (1) Article 19 of the United Declaration of Human Rights which states "everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of

frontiers;” (2) Article 20 of the United Declaration of Human Rights which states “everyone has the right to freedom of peaceful assembly and association” and (3) Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedom which states “everyone has the right to freedom of expression.”

By understanding the nature and complexity of multinational operations, the Ombudsman and Inspectors General will be able to adapt more readily to the unique demands and needs of supporting our Armed Forces personnel and Commanders who are responsible for various units from other nationalities.