



# Military Ombudsman

May 2005

[What is a Military Ombudsman?](#)

[Why is the Institution Important?](#)

[How to Ensure the Full Potential of the Institution?](#)

[How do the German and Canadian Oversight Mechanisms Work?](#)

[What About Other Approaches?](#)

[Open Questions](#)

[Issues Related to that of the Ombudsman](#)

[Further Information](#)

[Military Ombudsmen on the Web](#)

[Information on Other Ombudsman Institutions](#)

## What is a Military Ombudsman?

For the purpose of this paper, a military ombudsman (MO) is a mechanism independent of the military command structure that exercises oversight of the defence sector and helps to ensure that it observes the principles and practice of good governance. The MO addresses complaints about improper and abusive behaviour in the military as well as shortcomings in military procedures, and formulates recommendations for corrective action. The MO does not make defence policy or decisions on operational issues. While the immediate purpose of the MO is to redress grievances and to encourage proper conduct of and within the defence sector, the broader role of the office is to enhance its efficiency and effectiveness by making it accountable and responsive to its constituencies.

## Why is the Institution Important?

The MO helps to

- exercise democratic control over the defence sector
- ensure respect for the rule of law in the armed forces
- promote transparency and accountability in defence structures
- focus attention on problems in military practice requiring corrective action
- enhance the efficiency and effectiveness of the defence sector
- strengthen confidence in the military on the part of both the public and defence sector personnel

An MO can be of particular benefit to transitional and developing democracies; and countries with reforming security sectors, where the Executive and the General Staff tend to be strong, the Legislature weak and the Courts dependent on the other branches. Here the MO can bolster standard mechanisms of oversight and counterbalance the institutional weakness that is typical of such environments.

## How to Ensure the Full Potential of the Institution?

For an MO office to realize its full potential, there are three key requirements: operational independence, political authority, and an adequate material/intellectual infrastructure. Ideally, the office of the MO should

- be legally defined in the constitution or an act of the legislature
- have its own investigative capacity, and be authorized to freely initiate investigations on questions affecting individuals or, as appropriate, of a systemic nature
- have access to the information necessary to conduct any investigation
- be able to operate in the utmost confidentiality
- be able to publish reports for the attention of parliament and the general public
- be empowered to formulate recommendations for consideration by the civil and military leadership, which require official and public responses
- be housed in its own premises, independently of the General Staff

Of crucial importance is the staff of the office of the MO. Ideally, this should be made up of civilians whose expertise allows for the MO office to carry out research, formulate legal opinions and develop media policy independently of other departments of government. To avoid problems in accessing classified information, the staff should also be cleared to the highest security level.

## How do the German and Canadian Oversight Mechanisms Work?

The German Ombudsman, known as the Wehrbeauftragter des Bundestages (WB), or Parliamentary Commissioner of the Armed Forces, and the Canadian Military

Ombudsman are among the most profiled mechanisms for military oversight. They have often been used as models by other countries, for example, the Irish Military Ombudsman and the Czech Republic Armed Forces Ombudsman.

The WB office was established in 1959 after the decision was taken to recreate German Armed Forces. The office is based on the Swedish Militieombudman, the first structure of its kind, which was established in 1915. The office of the Canadian Military Ombudsman was set up in 1998 following the investigation into the Somalia affair.

Both offices have approximately 50 staff members. The German WB received 6154 complaints in 2004 for 260,000 members of the Bundeswehr (German Armed Forces). During the same period, the Canadian MO received 2274 complaints for the 60,000 members of the Canadian Forces (CF) and the 20,000 civilians employed by the Canadian Department of National Defence (DND). The annual budget of the German WB in 2004 was around €3,370,000. That of the Canadian MO for the 2003-2004 fiscal year was roughly similar at €3,069,000.

Table 1 highlights the main features of the two approaches.

## What About Other Approaches?

In addition to the Canadian and German **independent military oversight mechanisms**, described above, there are essentially two other approaches: **integrated military oversight mechanisms**, or mechanisms that are part of the military hierarchy, and **civilian oversight mechanisms**, such as a Parliamentary Ombudsman or a Human Rights Ombudsman whose mandates include military and defence matters. Each of these approaches has its strong and weak points.

# Table 1 – A Comparison of the Canadian and German Systems

Canada's Military Ombudsman (MO)	KEY ISSUES	Germany's Wehrbeauftragter (WB)
<ul style="list-style-type: none"> <li>negotiated mandate but no legal statute</li> <li>by the government on the Defence Minister's (DM) recommendation for a 5-year term (renewable)</li> </ul>	<p><b>What is the legal status of the Office?</b></p>	<ul style="list-style-type: none"> <li>article 45b of the Constitution</li> <li>law on the Wehrbeauftragter des Bundestages</li> </ul>
<ul style="list-style-type: none"> <li>current and former members of the CF and DND, and family members</li> <li>the DM, the military chain of command, a member of parliament</li> <li>the MO, with notice to the DM</li> </ul>	<p><b>By whom is the MO is appointed?</b></p>	<ul style="list-style-type: none"> <li>by a majority vote of the Bundestag in secret ballot for a 5-year term (renewable)</li> </ul>
<ul style="list-style-type: none"> <li>any individual complaint within the purview of the CF and DND</li> <li>systemic issues</li> </ul>	<p><b>Who can initiate a complaint or trigger an investigation?</b></p>	<ul style="list-style-type: none"> <li>members of the Bundeswehr (Armed Forces) and their family members</li> <li>the Bundestag, its Defence Committee</li> <li>the WB at his discretion</li> </ul>
<ul style="list-style-type: none"> <li>the complainant must have attempted to resolve the complaint by referring it to the chain of command or the military grievance system</li> <li>the MO can refuse a complaint if it is untimely or frivolous or if it would require an injudicious use of resources</li> <li>the MO can accept a complaint directly in compelling circumstances</li> </ul>	<p><b>What kind of cases can the MO/WB address?</b></p>	<ul style="list-style-type: none"> <li>any individual complaint or petition made by Bundeswehr personnel</li> </ul>
<ul style="list-style-type: none"> <li>to the DM</li> </ul>	<p><b>What preconditions must be fulfilled before the MO/WB can accept a case?</b></p>	<ul style="list-style-type: none"> <li>the members of the Bundeswehr have the right to contact the WB directly without going through other bodies of the military grievance system</li> </ul>
<ul style="list-style-type: none"> <li>the MO makes recommendations and can follow-up his recommendations with the relevant bodies with a view to monitoring implementation</li> </ul>	<p><b>To whom does the MO/WB report?</b></p>	<ul style="list-style-type: none"> <li>to the Bundestag</li> </ul>
<ul style="list-style-type: none"> <li>the MO publishes an Annual Report which is tabled in Parliament by the Defence Minister and debated by the relevant parliamentary committees</li> <li>the MO also publishes Special Reports on specific investigations, when he judges this to be in the public interest</li> </ul>	<p><b>What is the nature of the MO/WB rulings?</b></p>	<ul style="list-style-type: none"> <li>the WB makes recommendations and can follow up his recommendations with the relevant bodies with a view to monitoring implementation</li> </ul>
<ul style="list-style-type: none"> <li>the MO can access all documents that he needs to carry out his function (in some cases the MO may be denied access for security considerations or operational requirements)</li> </ul>	<p><b>What other sources of influence does the Office have?</b></p>	<ul style="list-style-type: none"> <li>the WB publishes an Annual Report, which is submitted to the President of the Bundestag; the President refers the report to the Defence Committee, which requests the DM to comment on it</li> <li>the WB can request reports on discipline in the Bundeswehr and attend criminal or disciplinary proceedings in court as an observer</li> </ul>
	<p><b>What about classified information?</b></p>	<ul style="list-style-type: none"> <li>the WB can demand access to information and records from the DM</li> </ul>

The military leadership and the executive tend to favour the **integrated military oversight mechanism** as it appears to be more receptive to command and control issues and attentive to the need to protect the operational effectiveness of the military. The Inspector-General, as this mechanism is most often called, is usually involved in operational issues, and the incumbent is invariably a serving member of the military. The main drawback of this approach is that here the military performs the oversight function on itself. This can create potential for conflict of interest and undermine confidence in the recommendations of the oversight body. This approach tends to be the norm in both democratic and democratizing countries.

Systems where the military oversight function is part of a **civilian oversight mechanism** have the advantage of ensuring that soldiers' rights are not unduly differentiated from those of the population as a whole. The concentration of the ombudsman function in one office can also be less costly than having several specialized offices. At the same time, a civilian oversight mechanism may lack the necessary expertise for dealing with the defence sector and may fail to focus attention on the particular problems facing military personnel. Examples of this model are Ukraine, Portugal, Lithuania, and Sweden.

The **independent military oversight mechanism** has the advantage of being able to devote its attention to military matters and of being to operate at arm's length from those it is mandated to oversee. Its ability to issue public reports strengthens Parliament's oversight capacity and ensures greater transparency and accountability of the military. While the mechanism may raise reservations in the military hierarchy and the civilian defence management structure, if it is truly independent, impartial, fair and

effective in its recommendations, it can come to enjoy their confidence and support.

The approaches described above are not to be confused with ombudsmanry that assists a client in developing, and then pursuing, his or her options for resolving problems. Mechanisms of this type have proliferated in recent years in the corporate and educational sectors, and in social organizations. This approach is not typical of the defence sector.

As a final point on the different approaches in play - little or no oversight or accountability of the military is characteristic of authoritarian and failed states.

## Open questions

- One question that arises in a security world where it has become increasingly important for the gamut of security sector actors to be able to work together is whether the MO should not become an ombudsman overseeing all security sector actors. In any event, there is a decided need for enhanced oversight of security sector actors other than the military. Here the oversight function tends to be even more underdeveloped than in the defence sector.
- Increasingly, the military and other security sector actors find themselves engaged in theatres well beyond their country's national borders and traditional areas of deployment. This development has important implications for the oversight function.
- There is a small but increasing number of countries that have a MO. They should consider meeting on a multilateral basis for exchanges of mutual concern and with a view to developing interest in the institution.
- A host of regional and international institutions have direct or indirect responsibilities in the area of oversight.

They should be encouraged to consider regional and general approaches to oversight, including the possibility of developing a code of conduct for oversight.

### Issues related to that of the Ombudsman

- human rights and the armed forces
- trade unions and the armed forces
- military justice
- minority rights and the armed forces
- relationship between parliamentary committees and the defence ministry
- military and society
- civilian oversight of the security sector
- organizational models for the relationship between the MoD and the General Staff

### Further Information

Born, H., Fluri, P., Johnsson, A. (eds.) *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, Handbook for Parliamentarians no. 5. IPU/DCAF: Geneva, 2003, pp.90-93.

Gleumes, Karl. *The Parliamentary Commissioner for the Armed Forces. His Role in Exercising Parliamentary Control over the Federal Armed Forces and Processing Petitions From Service Personnel*. Berlin, German Bundestag, 2001.

Marin, André. *The Way Forward - Action Plan for the Office of the Ombudsman*. Report to the Minister of National Defence of Canada. Ottawa, 1999.

Marin, André. *Overhauling Oversight: Ombudsman White Paper, Submitted to the Prime Minister of Canada*. Minister of National Defence and Minister of Veterans Affairs. March, 2005.

### Military Ombudsmen on the Web

Australia (The Commonwealth Ombudsman and Defence Force Ombudsman, Federal): [www.comb.gov.au](http://www.comb.gov.au)

Canada (Ombudsman for National Defence and the Canadian Forces): [www.ombudsman.forces.gc.ca](http://www.ombudsman.forces.gc.ca)

Germany (The German Bundestag's Parliamentary Commissioner for the Armed Forces): [www.bundestag.de/htdocs\\_e/orga/03organs/06armforce.html](http://www.bundestag.de/htdocs_e/orga/03organs/06armforce.html)

Israel (Soldier's Complaints Commissioner): [www.idf.il/english/organization/nakhal/foreword.stm](http://www.idf.il/english/organization/nakhal/foreword.stm)

Netherlands (The Inspector-General of the Netherlands Armed Forces): [www.mindef.nl/ministerie/igk/english/index.html](http://www.mindef.nl/ministerie/igk/english/index.html)

### Information on other Ombudsman Institutions

International Ombudsman Institute (IOI): [www.law.ualberta.ca/centres/ioi/](http://www.law.ualberta.ca/centres/ioi/)

Association des Ombudsmans et Médiateurs de la Francophonie (AOMF): <http://democratie.francophonie.org/sijip/html/AOMF/>

The Ombudsman Association (TOA): [www.ombuds-toa.org/index](http://www.ombuds-toa.org/index)

## Notes



## Acknowledgements and Further Information

DCAF wishes to acknowledge all those who have been involved in the production of this Backgrounder. Several ombudsman offices provided valuable guidance on oversight practices. Oksana Myshlovska, research assistant at DCAF, did much of the initial research for this document for which we are also very grateful.

DCAF welcomes comments from readers and will issue revised versions of this backgrounder as appropriate. Hard copies of the backgrounders can be obtained from DCAF on request. The backgrounders can be consulted and downloaded at the DCAF website.

For general queries or comments on the Backgrounder series, contact David Law, Senior Fellow, Security Sector Reform and editor of this series at [d.law@dcaf.ch](mailto:d.law@dcaf.ch)

For comments and queries on specific documents in the series, or to be put on the mailing list, contact Jason Powers, Editor/Publications Coordinator at [j.powers@dcaf.ch](mailto:j.powers@dcaf.ch)



Established in October 2000 on the initiative of the Swiss government, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) encourages and supports States and non-State governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces, and promotes security sector reform conforming to democratic standards.

Detailed information on DCAF can be found at [www.dcaf.ch](http://www.dcaf.ch)

Geneva Centre for the Democratic Control of Armed Forces (DCAF):  
rue de Chantepoulet 11, PO Box 1360, CH-1211 Geneva 1, Switzerland  
Tel: ++41 22 741 77 00; fax: ++41 22 741 77 05  
e-mail: [info@dcaf.ch](mailto:info@dcaf.ch); website: [www.dcaf.ch](http://www.dcaf.ch)