



IX Seminar for Legal Advisors of the Armed Forces

**Operational Law in SOF Context:
Practical considerations for Legal
Advisors**

**LCol JM Cambron
Canadian Joint Operations LEGAD**



Overview

- Preliminary Remarks
 - SOF Legal issues in the larger operational law construct
 - Challenges in the delivery of legal services
 - Typical SOF operational law issues
 - Associated legal issues
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Preliminary Remarks

Caveat: Briefing will focus on operations with robust legal grounds, not on clandestine, covert or undeclared activities.

- ❑ Emergence of Op Law as a distinct military law specialized field: still relatively recent
 - ❑ Advising SOF organization: even more recent
 - ❑ Angle of this briefing: less on substantive law issues than on practical considerations of legal service delivery in SOF environments
 - ❑ Generic Op Law discussion is welcome
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SOF Legal issues and larger Op Law construct

There is no SOF-specific legal framework. Like conventional operations, SOF operations can be conducted domestically or in expeditionary contexts

- ❑ SOF organization usually consist of forces containing specially selected personnel that are organized, equipped and trained to conduct high-risk, high value special operations to achieve strategic and operational objectives and effects.
 - ❑ Different countries have different organizations names but conduct similar tasks requiring legal advice
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Challenges in the delivery of SOF Op Law services

Legal resources aligned and tailored to the client's requirements as SOF organizations are either recent or evolving.

- ❑ Specific legal training, preparation and operational culture
 - ❑ Supervision and relationship with legal chain of command
 - ❑ Working network ensuring adequate flow of information within the legal net
 - ❑ OPSEC and trust
 - ❑ Canadian recent postures for domestic and deployed LEGADs
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Typical SOF Op Law Issues

Domestic SOF operations

- ❑ Support to other departments: interagency by nature
 - ❑ Process to request military assistance domestically
 - ❑ In Canada: support to law enforcement, high level public service, low level provision of service
 - ❑ Scripted process that need to be followed
 - ❑ SOF support to law enforcement, especially kinetic resolution is the very last resort option
 - ❑ Legality of operations and success of prosecution at stake
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Typical SOF Op Law Issues

Expeditionary SOF operations: include kinetic and non kinetic

- Special Reconnaissance
 - Direct Action
 - Non Combattant Evacuation
 - Defence, Diplomacy and Military Assistance
 - Counter proliferation
 - Combat Search and Rescue
 - Close Personal Protection
 - PSYOPS & IO
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Typical SOF Op Law Issues

Expeditionary SOF operations: a basic but critical mantra

- ❑ Domestic Authority: depending on scope of ops, Executive powers to various levels need to be exercised
 - What does the government want?
 - Who directed or authorized?
 - What is the task?
 - Where is it written?
 - Routine/administrative or a true deployment?
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Typical SOF Op Law Issues

- International legal basis:
 - UNSCR
 - Self-defence (including protection of nationals)
 - Host nation consent
 - SOFA, Military Arrangements, Diplomatic Notes, Note Verbale, silent procedures
 - Status, entry/exit, weapons, criminal jurisdiction, uniforms, use of force, protection of property,
 - Consideration to Host Nation domestic laws
 - Outside a strong legal basis, read Nicaragua, Oils Platforms and Corfu cases and study local laws...
 - Qualification of the conflict (if any)
 - IAC/NIAC
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Typical SOF Op Law Issues

- Jus in Bello considerations
 - Use of force & ROE's
 - Targeting (particularly individuals)
 - Detainee issues
 - Weapons (Art 36 reviews)
 - CONOP development
 - Use of non conventional uniforms
 - Command Responsibility (particularly in DDMA)
 - Interaction with other forces
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Typical SOF Op Law Issues

Expeditionary SOF operations

- ❑ Other considerations
 - Claims: liability and ex-gratia payments
 - Contracts: local procurement
 - Locally Employed Personnel: balance force protection requirements and fair treatment of individuals
 - Negotiations with local authorities
 - Legal skills can sometimes be used to shape the battleground as much as to advise the client
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Associated Legal Issues

Lesser known SOF legal puzzles

- ❑ Procurement: more flexibility
 - ❑ Financial issues: lower delegations
 - ❑ Discipline: classification of key elements of information
 - ❑ Mission Command and decentralized execution of operations: requirement for operational tools with embedded legal mitigating measures (in the orders, directives, ROE's, etc)
 - ❑ Special attention to training and education: formal lecture and informal use of mantras
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References

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Questions?

Case Study: A Joint SOF-Conventional operation

