



## □ Sentinel or the experience of "enhanced" legal security for armed forces engaged on national territory

Land Forces Doctrine Review

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Autres thèmes

**The term "augmented" is now attached to subjects that have become more efficient thanks to the technological progress linked to the Artificial intelligence can be perfectly applied to describe recent legal developments that have benefited military personnel deployed on the TN in the context of a requisition.**

**The increase here does not stem from technological advances, but from the State's recognition of the need for clarity regarding both the modalities of engagement of the armed forces in the NT and the conditions of use of force.**

The year 2017 appears in this respect to be the pivotal year during which the reflections carried out since the attacks of 2015 led to the adoption of new texts. The time needed to decide on fundamental issues affecting the very essence of the armed forces with regard to the missions that the Nation intends to entrust to them in the event of terrorist attacks.

Thus, beyond the fundamental texts that organise the military's commitment to the NT and its legal framework for the use of weapons, the military in the NT today benefits from a legitimacy based one from the now shared understanding of its mission and its natural limits, as well as the environmental control it demonstrates, all of which contribute to legally securing its action.

### **A shared understanding of the nature of the armed forces' mission in the TN**

The "chaotic" post-attack period in 2015 and the deployment of Operation Sentinel, which was exceptional in view of the volume of forces committed over the long term, legitimately led to questions about the adaptation of the existing legal framework to this context of new violence. Indeed, consisting of often old texts, added over time according to the needs of the moment, the legal framework for the engagement of armed forces in the NT is difficult for the layman to grasp. However, the organisation of defence in France is of a simple presentation, based on two pillars: military defence and civil defence.<sup>37</sup>.

However, the addition of the exceptional application regimes<sup>38</sup> may have made it more complex to read at first glance. Similarly, the introduction by the 2008 White Paper of the concept of national security<sup>39</sup> in the Code of Defense (CODEF) may also have contributed to blurring its meaning, since national security encompasses both external and internal security and covers only part of the field of national defense. Thus, while it continues to be aimed at ensuring the ultimate protection of the territory and the population, national defence now aims only at responding to armed aggression and no longer to any form of aggression.

The new version of Instruction 10100<sup>40</sup> The introduction to the report, which is a perfect description of this organized dichotomy within the concept of national security, is very clear: on the one hand the defence policy which aims to protect the integrity of the territory against armed aggression and on the other hand the national public and civil security policies which aim to guarantee the security and protection of the population. The competences are thus clearly defined: the armed forces are indeed the *Ultima ratio* of the Nation in ensuring the military defence of the territory. Civil defence is the foundation on which the commitment of the armed forces to the TN is based in the framework of Sentinel or Vigipirate type operations: commitment on the basis of a requisition issued by the civil authority to intervene in support of the internal security forces or civil security forces.<sup>41</sup>

From this distribution of competences according to the threat envisaged follows logically from the need to maintain a distinction between the day-to-day exercise of the ordinary law of public security and the implementation of a right of derogation which is only permitted in certain exceptional circumstances.<sup>42</sup>

Consequently, the question that may have arisen of granting the soldiers deployed in the NT in support of the ISF special prerogatives enabling them to carry out acts that fall within the scope of the administrative or judicial police.<sup>43</sup> loses its relevance. Indeed, there is no justification for granting overriding powers to forces not entrusted with a public security mission in "ordinary" times. This attribution of powers that are "apparently neutral" with regard to the effect produced on the ground would lead, in fact, to a profound evolution (a real change in nature) of the military's mission and the purpose of armies.

Thus, this understanding of the national security strategy framework is an essential element of the legitimacy of the armed forces in the NT by the preThis understanding of the scheme of the national security strategy is an essential element of the legitimacy of the armed forces in the NT by pre-serving their deep identity and their purpose, which is to protect the Nation against armed aggression while consecrating its role as a contributor to the public security mission.

## Optimized control of the TN environment

The work carried out on adapting the legal framework to the new context of the national territory has above all highlighted the need to clarify this commitment with regard to its implementation methods and the use of force.

The revision of Instruction 10100<sup>44</sup> was intended to address this by introducing

consistency and some substantial changes.

On the substance, this document made a major step forward with the introduction of the concept of effect to be achieved, which makes it possible to preserve the freedom of action of the military leader. It also enshrined civil-military dialogue, which guarantees the effectiveness of military action on the ground, thanks to the adherence that results from a constructive exchange. Finally, the proposal for a single requisition model, accompanied by detailed "instructions for use", contributes to a better understanding of the military's role in the conflict. Finally, the proposal for a single requisition model, accompanied by detailed "instructions for use", will also help to make military action more secure by ensuring that all the elements needed to carry out the mission are defined.

As regards form, this document, written in a very clear manner, makes it easier for the user to read, on the one hand, by incorporating the provisions of the 500<sup>45</sup> now repealed, and secondly by describing in summary form the aspects of the armies' engagement in the TN. The exclusion, in the preamble, of forms of engagement in the framework of military defence and in particular operational defence of the territory.<sup>46</sup> contributes greatly to the clarity of the document by focusing on support to internal and civil security forces in peacetime (and possibly in states of emergency). The confusing concept of "law and order" is discarded in favour of the more precise and legally acceptable concept of military involvement in the maintenance of law and order involving confrontation with a hostile crowd. The exceptional nature of this confrontation is clearly stated. Finally, the clear and up-to-date presentation of the conditions for the use of force and the use of weapons contributes to the legal security of military personnel.

Indeed, the military personnel deployed in the TN, like the members of the internal security forces<sup>47</sup> The only grounds for criminal irresponsibility common to all citizens were the following.

The attacks at the Bataclan highlighted the need for a new criminal excuse to justify opening fire on a terrorist who has committed or attempted to commit murder and objectively presenting the will to repeat it. This criminal excuse, described as a "murderous journey", was introduced into Article 122-4-1 of the Penal Code and was available to the military personnel concerned, thereby establishing their recognition as actors on national territory.

The increasing number of acts of aggression against the forces of law and order led to the drafting of a report under the direction of Mrs Cazaux-Charles<sup>48</sup> concluding that it is necessary to establish a legal framework for the use of weapons by law enforcement agencies. Uniforms, which for a long time provided protection through the respect they inspired, are now targeted. This development has justified the establishment of special protection, in comparison with the ordinary citizen, with the implementation of a legal framework for the use of weapons. Thus, article L.435-1 of the Internal Security Code defines five cases in which internal security forces and customs officers may use their weapons. Pursuant to article L.2338-3 of the CODEF, this regime is applicable to military personnel deployed on national territory in the context of requisitions.<sup>49</sup> (for the five cases including the murderous journey removed from the Penal Code and now integrated into the CSI) as well as to "military personnel responsible for the protection of military

installations located on national territory" (with the exception of the "murderous journey"). This use of weapons is subject to compliance with the principles laid down in the case law of the European Court of Human Rights (ECHR) of absolute necessity and strict proportionality.

The attribution of the benefit of this framework to the military, beyond its usefulness, has a strong symbolic impact, as was the case for the murderous journey.

In addition to these legislative developments, which are certainly essential, the use of force in the NT has been placed at the heart of the concerns. Thus, actions contributing to the objective of perfect control of the use of force, conceived as an essential element of the law, have been taken. The legitimacy of our action on the TN (following the example of what is happening in OPEX) has been strengthened through a genuine "rebuilding" process.<sup>50</sup> "of the training"<sup>51</sup> and legal advice, which is constantly evolving. This training is all the more crucial as the "dual employment" of the military, in OPEX and on the TN, presupposes intellectual flexibility to adapt to different legal frameworks (and different environments) requiring good judgement skills. However, the constant concern to control the use of force instilled in the soldier, in external operations, is found on the TN and thus contributes to its effectiveness on the TN.

Thus, the legal framework for the engagement of the armed forces in the NT in the context of civil defence in peacetime has not undergone any profound changes. It is the important work of appropriation of the field that has made it possible to identify ways of improvement and to establish coherence in a dense system. This experience confirms that our legal system, the fruit of history, is perfectly adaptable and adaptable to new challenges and contexts. Therefore, rather than adding to what are often complex buildings, the effort must be focused on understanding, clarifying and "properly" implementing what already exists.

37 More rigorously, defence is organised between military and non-military defence. The latter being composed of economic defence and civil defence. As the armed forces have little impact on economic defence, the term civil defence is more widely used.

38 State of siege, state of emergency and state of war.

39 Article L1111-1 of the CODEF : "The purpose of the national security strategy is to identify all the threats and risks likely to affect the life of the Nation, in particular with regard to the protection of the population, territorial integrity and the permanence of the institutions of the Republic, and to determine the responses that the public authorities must provide. All public policies contribute to national security. Defence policy is aimed at ensuring territorial integrity and the protection of the population against armed aggression. It contributes to the fight against other threats to national security. It ensures respect for international alliances, treaties and agreements and participates, within the framework of the European treaties in force, in the common European security and defence policy. »

40 Instruction No. 10100/SGDSN/PSE/PSN/NP of 14/11/2017.

41 Article L1321-1 of the Defence Code.

42 "Pour approfondir la sécurité nationale, nouveau concept du droit français", Bertrand Warusfel.

43 Identity check or control, search.

44 Interministerial Instruction relating to the engagement of armies on national territory in the event of a major crisis n°10100/SGDSN/PSE/PPS/CD of 3 May 2010.

45 Interministerial Instruction No. 500/SGDN/MPS/OTP relating to the participation of the armed forces in the maintenance of law and order of 9 May 1995.

46 The Armed Forces are also engaged in the land environment, within the framework of military defence, for the implementation of the Permanent Measures for the Operational Defence of the Territory (DOT).

47 The gendarmes had a specific criminal excuse, but in practice this was constrained by the case law of the ECHR.

48 Director of the Institut National des Hautes Etudes de la Sécurité et de la Justice (INHESJ).

49 Provided for in Article L1321-1 of the Defence Code.

50 Issuance before deployment of a standardised "operational legal instruction", presented by LEGADs trained in the legal framework on NT, development of tutorials.

51 Importance of training oriented towards practical aspects (including examples).

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