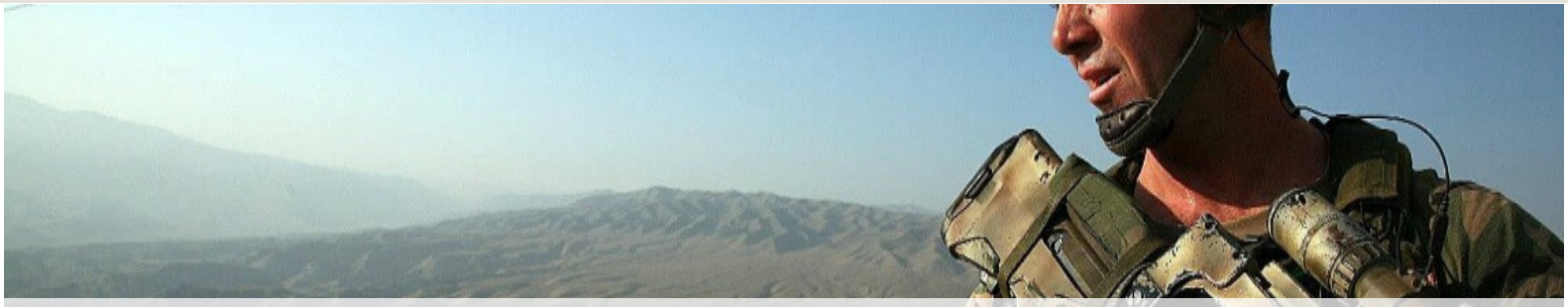

The action of our armies is necessarily part of a legal context that is now well established, even if it is still evolving 2/2

Reflection circle G2S - n°23

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Published on 05/04/2019

L'Armée de Terre dans la société

Lhe other general components of the legal framework for the use of armed force

Lhe Charter of the United Nations

Signed in SAN FRANCISCO on 26 June 1945, it is the founding document of the United Nations' action. Created to " save succeeding generations from the scourge of war", the United Nations has as one of its main purposes the safeguarding of international peace and security. The Charter confers on the Security Council the primary responsibility for fulfilling these goals.

As such, the Council can take a range of measures, including the establishment of a United Nations peacekeeping operation. The legal basis for such action can be found in the Charter, in particular Chapters VI (Peaceful Settlement of Disputes), VII (Action on Threats to the Peace, Breaches of the Peace and Acts of Nuclear Weapons) and VIII (Action in the Event of Armed Conflict).The legal basis for such action is to be found in the Charter, in particular Chapters VI (Peaceful settlement of disputes), VII (Action in the event of threats to the peace, breaches of the peace and acts of aggression) and VIII (Participation of regional arrangements and mechanisms in the maintenance of international peace and security insofar as their activities are consistent with the purposes and principles of the Charter).

The Charter of the United Nations is thus of paramount importance for the legitimacy or otherwise of actions by a force, national or multinational, in a crisis area. It ultimately authorizes the UN to issue mandates for the conduct of peacekeeping or peacemaking operations. These mandates are underpinned by a series of general references, including the Security Council resolution 1325 (2000) on women, peace and security, Resolution 1612 (2005) on children and armed conflict and Resolution 1674 (2006) on the protection of civilians in armed conflict.

From international humanitarian law to the responsibility to protect

Also known as the " law of war" or "law of armed conflict", international humanitarian law governs the practices of parties to a conflict. In practice, international humanitarian law has recently undergone a major legal evolution as it has been used by some States to politically legitimize the intervention of their armed forces. In 1999, for example, NATO bombed Serbia without an explicit UN mandate but on humanitarian grounds, which did not make the operation lawful, but gave it political legitimacy and legitimacy in the eyes of Western public opinion. In the end, Serbian violence was exploited to justify the use of force a posteriori and to put legitimacy above international legality. This Serbian episode questioned the notion of the duty of humanitarian interference, which allowed de facto circumvention of international law.

This led to the gradual emergence of a new, more legally solid concept, that of the "responsibility to protect". In 2005 this responsibility was endorsed by the United Nations General Assembly. The responsibility to protect of the international community, and in particular the UN Security Council, is clearly stated when a state is unable or unwilling to protect its population from the most serious crimes. While it is the responsibility of each state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, it is the international community, within the framework of the United Nations, that has the subsidiary responsibility to provide protection from these crimes when the state is unwilling or unable to do so. The responsibility to protect is therefore now the legal translation of what was previously called the duty to intervene on humanitarian grounds.

Lhe benchmark of the Atlantic Alliance

For Western countries (excluding neutral countries such as Switzerland or Austria), another reference is essential: the North Atlantic Treaty (4 April 1949) with its armed arm, the military structure of NATO. From a military point of view, the main article of this treaty is Article 5, which states that "an armed attack against one of the members, whether in Europe or North America, shall be considered an attack against all the parties to the treaty". It was this article that presided over the East-West confrontation during the Cold War and which would have legitimised the entry into war of the countries making up the Atlantic Alliance.

Lhe other references

The Theatre ofOperations (TO) and Rules of Engagement (ROE) are references **in the** recent military engagements of our forces that are also essential for the legality and legitimacy of the use of armed force.

The concept of TO defines the geographical, land, air and maritime limits of an operation and therefore a perimeter within which forces will obey specific rules that are not those of peacetime: the notion of theatre of operations therefore has a major legal connotation.

The specific rules applied by the forces in a TO are called rules of engagement. They are very important since they govern the attitude of units and in fact determine the manner in which force or coercion is used by those units. Thus, they "create the law" in a military intervention: they authorize or not, and they graduate the use of violence when it is

necessary; they are the primary reference for the command to define the actions that units can carry out in the field in the execution of their mission.

Lhe Penal Code

The French forces, wherever they are, comply with the provisions of the Criminal Code, under national law, and crimes and offences involving the personal responsibility of military personnel in the context of their engagement in operations are the responsibility of a specialized chamber, known as the Armed Forces Tribunal.

Lastly, the use of armed force, which is already subject to all these provisions, may come up against an additional pitfall, that of the judicialization of operations, which **is an attempt to extend the** scope of application of the Criminal Code to situations of violence, which are deliberately overlooked because they meet regalian imperatives. The death of a soldier in combat is not an ordinary death, but this fact tends to be denied in a society that trivializes the military profession, rejects the idea of war and its violence, and refrains from thinking of death as an event linked in essence to life. This problem is to be linked to the regrettable absence of a specific right for crisis management in a country which, officially and legally, is not at war, but at peace. The French legal arsenal only recognises the law of armed conflict, which applies to war and not to "local " war situations, on the one hand, and peacetime law, on the other . Judicialization, which is a matter of peacetime law, is the negation of the specificity of military action but also the result of the victimization of losses in combat, an inconsistent approach which de facto assimilates the armed forces.In a media search for "justice for all", the security forces seek to find a responsible andguilty party as soon as a man is killed.

Thus, when a military force is engaged today in the resolution of a crisis, it does so within a legal framework that is most consistent and binding, and in many respects complex, to In fact, it is so complex that force commanders have a legal adviser at their side to review the legality of orders that may be given in the course of action.

This is why ethical reflection finds for the military an essential part of its foundations and references in the law governing the use of armed force, at the heart of the soldier's mission. However, this law is only a framework, and one that is, moreover, evolving, as its history shows, and, as the Chief of Staff of the FrenchArmy recently stressed, it is important that "even in the most complex circumstances, everyone should retain his or her share of freedom, in order to preserve his or her honour in the service of France and its ideals".

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Release date 19/03/2019

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