



LEGAL ASPECTS OF REQUESTS

FOR CROSS BORDER MILITARY ASSISTANCE



2010 International Law Conference: The Future of Canada-US
Cross Border Relations

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The use of U.S. Forces for Emergency Response



- A. How could it be done?
- B. Is this Federal or Provincial jurisdiction?
- C How are these U.S. forces integrated into an emergency response?





Domestic Operations



“...are any CF activities which provide assistance in response to requests for support from Canadian civil authorities or from the Canadian public.”

3301-0 (DCDS) - 10 July 98 - NDHQ INSTRUCTION DCDS 2/98
GUIDANCE FOR THE CONDUCT OF DOMESTIC
OPERATIONS





KEY LEGISLATION

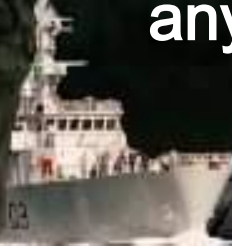


National Defence Act, Section 4

- “The Minister . . . has the management and direction of the Canadian Forces and all matters relating to national defence”

National Defence Act, Section 273.6

- “...the Minister may authorize the Canadian Forces...(1) to perform any duty involving public service . . .(2)...to provide assistance in respect of any law enforcement matter...”





Key Legislation



- *Visiting Forces Act*
- Outlines the jurisdiction over visiting troops in Canada nation for civil offences and military service offences
- Outlines liability and compensation for civil claims arising from personal injuries and property damage





General Range of Domestic Operations



Assistance to Law Enforcement

1.A. Public Service (Section 273.6(2) *National Defence Act*)

- The Minister, subject to any directions issued by the Governor in Council, may issue directions authorizing the CF to provide assistance in respect of any law enforcement matter:
 - When requested by the Solicitor General of Canada or any other federal Minister
 - The assistance is in the national interest
 - The matter cannot be effectively dealt with except with the assistance of the CF





Section 273.6(2)

Section 273.6 NDA - Public Service
Law Enforcement Matter (other than of a minor nature)



Request by SOLGEN or other
federal Minister for CF to provide assistance
in respect of any law enforcement
matter

1) assistance is in national interest; and
2) matter cannot be effectively dealt with
without CF assistance

YES

CF assistance authorized by
Governor in Council or MND

CF conducts operations as ordered
by CDS pursuant to MND
direction

NO

SOLGEN or Minister advised



Key International Agreements



- Agreement between Canada and the United States of America on Cooperation in Comprehensive Civil Emergency Planning and Management – 1986
- Agreement to cooperate and respond to regional emergencies
- Ensures rapid execution of the necessary civil emergency measures

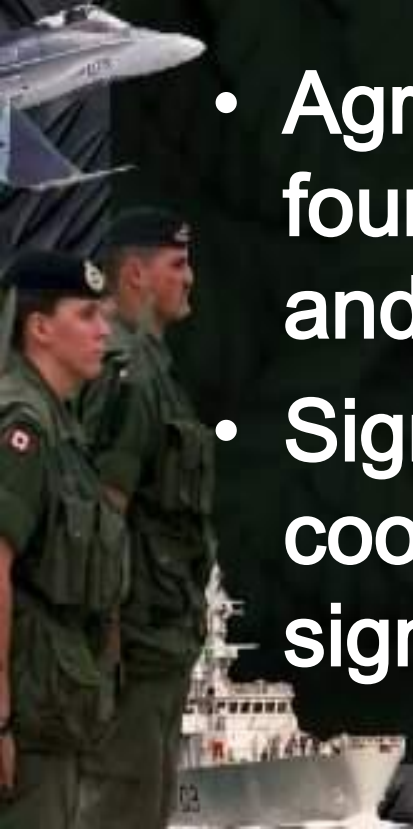




Key International Agreements



- Pacific Northwest Emergency Management Agreement (PNEMA)
- Agreement signatories: BC, Yukon and four U.S. states (Wash, Oregon, Idaho and Alaska)
- Signatories may seek advice, cooperation or assistance from other signatories in a civil emergency





PNEMA



- Agreement does not override the domestic law of the respective countries
- Sets up a regional advisory committee which exists to exchange contact information and review selected emergency management plans





Key International Agreements



- Canada – U.S. Civil Assistance Plan February 2008 (“CAP”)
- Agreement provides when and how either US or Canadian Forces can be deployed in either country to assist in a civil emergency
- Either country can request that normal application of strict border requirements be suspended to enable rapid deployment of troops into supported country

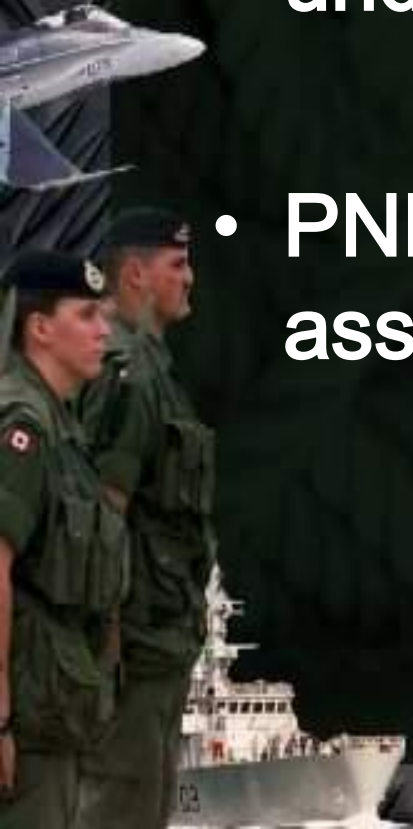




Federal or Provincial Jurisdiction?



- In B.C. powers to deal with disasters are under the *Emergency Programs Act*
- PNEMA gives B.C. power to summon assistance from outside of Canada





Federal or Provincial Jurisdiction?



- This conflicts with federal *Emergency Management Act*. Fed Minister responsible for “leading international emergency management activities”
- Assistance from U.S. military would require Cdn Federal approval and coordination



Example – Weapon of Mass Destruction Incident



- B.C. provincial authorities make request for assistance to Min of Public Safety
- Min of Public Safety would ask DFAIT to request the U.S. government to approve deployment of Wash State National Guard (“WSND”) under the CAP





Example – Weapons of Mass Destruction Incident



- MND would then require the Chief of the Defence Staff (CDS) of the Canadian Forces to coordinate
- CDS would delegate the task to Canadian Forces - Commander Canada Command





WMD Incident



- Art 1(f)(1) of the CAP stipulates that the nation providing cross border military support will not fulfill these requirements directly to other nation's civilian authorities but rather to the other nation's military
- WSNG Guard would be integrated and tasked through Canadian Forces -Canada Command





WMD Incident



- Even though the WSNG working along side myriad of ER Response PERS, Operational and tactical control over the WSND, through its commanders, would remain with Canada Command
- Art 1(g)(5) of the CAP states that the supporting forces, in this case the WSND will comply with authorized ROE and right of self defence consistent with the laws of Canada

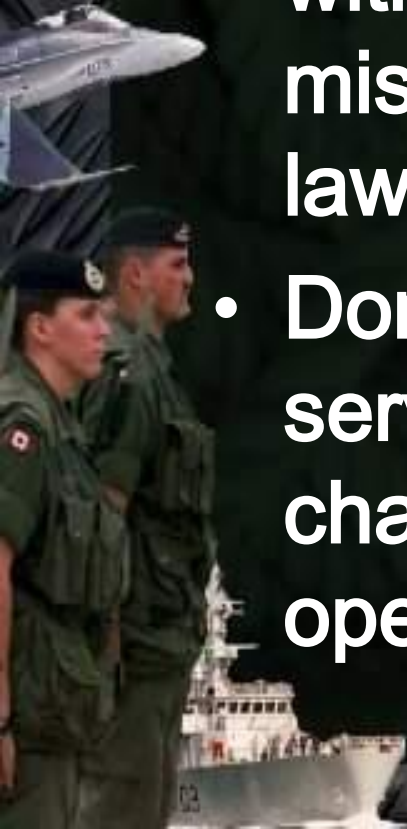




Summary



- NDA authorizes the deployment of CF within Canada for public service missions, which includes assistance to law enforcement
- Domestic deployment of CF for public service requires Min approval before the chain of command can commence operations





Summary



- Emergency agreement for Pacific NW – PNEMA, provides for cross border assistance by military forces but can be activated by civil authorities
- Canada – U.S. emergency agreement, CAP, permits cross border movement of Cdn or US military forces; those forces come under the military authority and ROE of receiving state





Questions?

