



Recent Developments in the Law of Military Operations

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Outline



- Introduction to the Office of the JAG and CF Ops
- Specific Issues in Operational Law
 - Direct Participation in Hostilities
 - Targeting
 - Air Security
 - Detainees
 - Counter-Piracy
 - Information Sharing
 - Biometrics
- A Canadian Case Study
 - Capt Semrau and the treatment of persons *hors de combat*

JAG Mission



In support of the CF and DND, the Office of the JAG delivers independent, operationally focussed, solution oriented legal advice and services across the full spectrum of military law, and superintends the administration of military justice.

JAG Vision



To be an agile military team of world class, operationally focussed, globally deployable and networked legal professionals, proudly contributing to a disciplined force and mission success in a manner that reflects Canadian values and the rule of law.

Overview – Current CF Operations



- International Operations
 - International Operations in 14 Locations
 - Combat Operations (Afghanistan)
 - Counter-Piracy Ops (Horn of Africa)
 - Humanitarian Operations (i.e. Haiti)
- Domestic Operations
 - Defence of Canada
 - Assistance to Law Enforcement



Direct Participation in Hostilities



- Fundamental Principle of LOAC
 - Distinguish between combatants and civilians; may only target combatants and civilians directly participating in hostilities
- ICRC “Interpretive Guidance”
 - What activities constitute DPH?
 - “... unless and for such time as ...” – is DPH a revolving door?
 - How much force is permitted – arrest before kill?
- Implications
 - COIN, “Targeted Killings,” PMSC, CNO





Targeting

- Fundamental Principles
 - Distinction
 - Proportionality
- Targeting Processes
 - Deliberate
 - Targets of Opportunity
 - Self Defence
- Role of the CF Legal Advisor



Air Security



- “Rogue Civil Aircraft”
- Legal framework depends upon proper characterization of the incident
 - “Armed attack” – LOAC
 - Law enforcement event – IHRL and domestic HR-based law
- Collateral damage estimate and proportionality analysis



Detainees



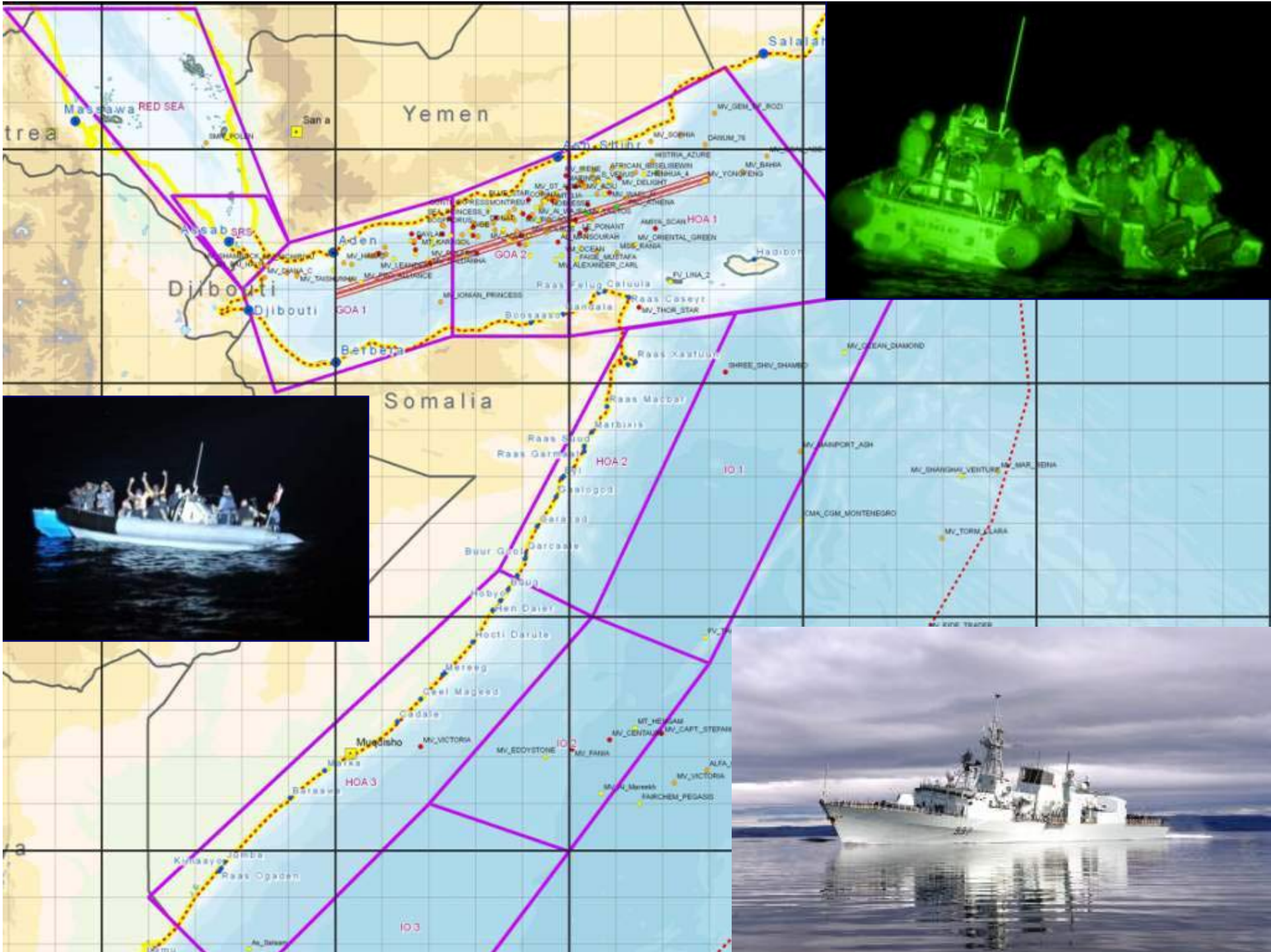
- Definition
 - Anyone who is, without his or her consent, in the care, custody or control of the detaining forces
- Authority to detain and standard of treatment depend on the nature of the mission and its legal framework
 - LOAC (as *lex specialis*)
 - IHRL (as *lex generalis* but subject to jurisdictional limits)
 - Domestic HR-based laws
- **All detainees entitled to humane and respectful treatment**
 - Obligations upon transfer to another State





Counter-Piracy

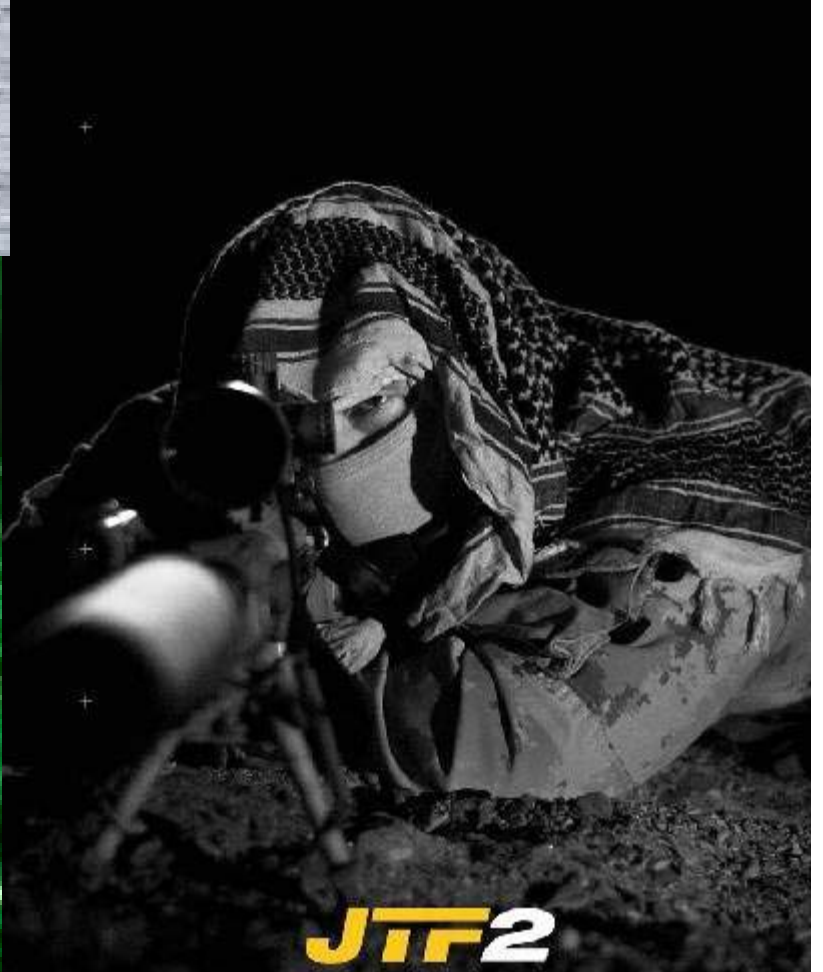
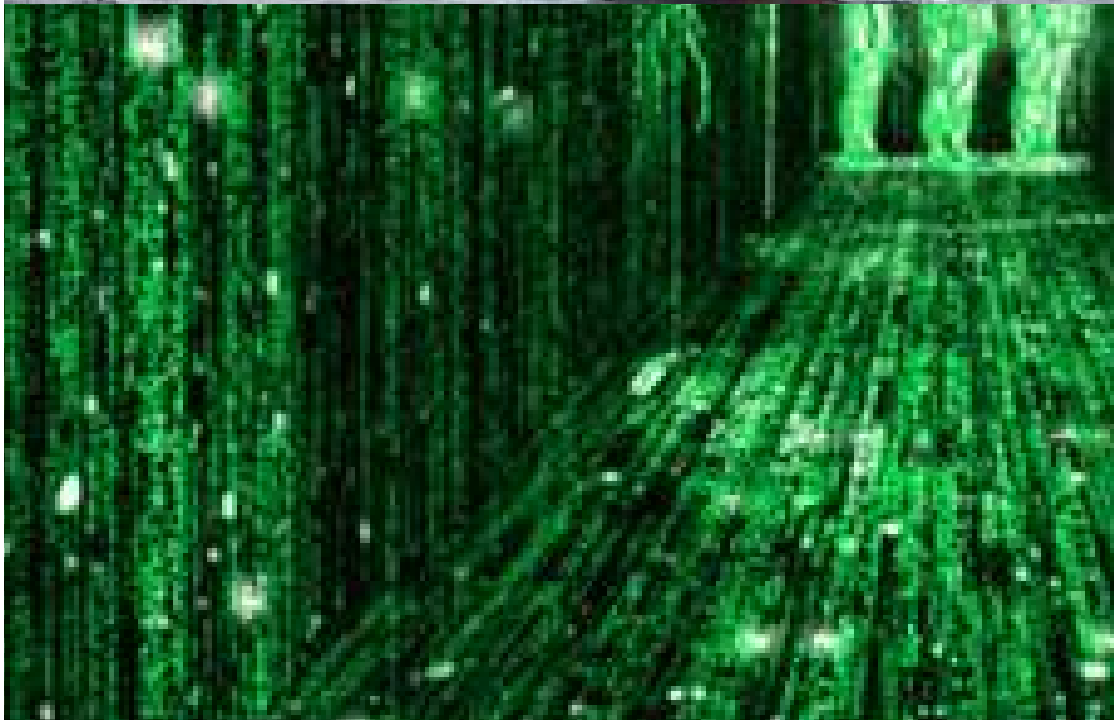
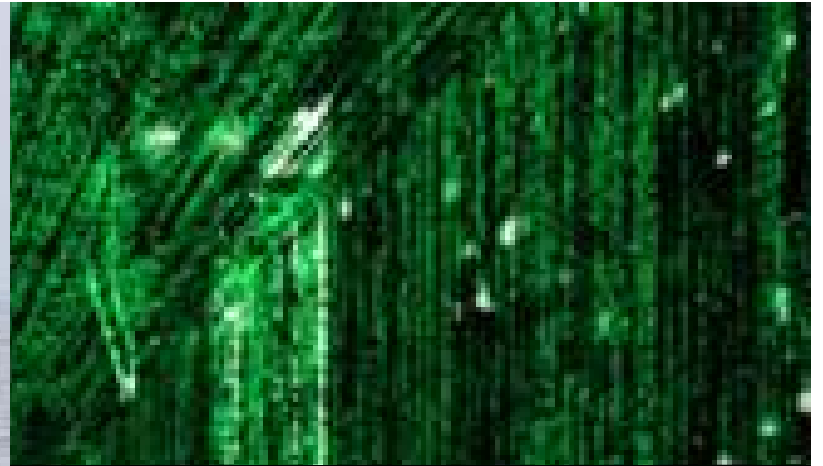
- Legal Framework
 - International Law of the Sea (customary and UNCLOS)
 - IHRL
 - UNSCRs
 - LOAC?
- Dealing with Alleged Pirates
 - Competing State interests in prosecution
 - Detention
 - Procedural rights
 - Transfer to another state





Information Sharing

- Inter-State
 - Legal authority to share
 - Originator control in light of foreign legal proceedings
 - Risk of sharing information derived from or used for mistreatment or torture
- Intra-State
 - Legal authority and perceived legal barriers to sharing
 - Constitutional
 - Human rights legislation
 - Privacy legislation





Biometric Data

- An exceptionally valuable tool in COIN operations and in the campaign against terror
- Legal challenges
 - Authority of military forces to collect, retain and use
 - International operations
 - Domestic operations
 - Authority to share
 - A unique set of information sharing challenges



TASK FORCE
BIOMETRICS



RC (S) BIOMETRICS
SUPPORT OFFICE



Compliance with LOAC – A Canadian Case Study

- *R. v. Capt Robert Semrau*
 - 19 October 2008
 - Deployed with CF OMLT (ETT) in Helmand Province, AFG
 - Alleged to have shot an unarmed and severely wounded insurgent
 - Charged with 2nd degree murder, manslaughter, negligent performance of a military duty and disgraceful conduct
 - Convicted by GCM of disgraceful conduct
 - Sentenced to dismissal and reduction in rank to Second Lieutenant
 - Public and CF reaction





An Emerging Issue

- Cyber Warfare
 - *Jus ad bellum* – what constitutes an “armed attack”
 - Self-defence
 - When do CND/CNE become CNA?
 - *Jus in bellum* – conduct of cyber hostilities
 - Targeting issues – distinction, proportionality
 - DPH – who is pushing the button







Questions?