NATIONAL UNIVERSITY OF PUBLIC SERVICE The Faculty of Military Sciences and Officer Training Doctoral School of Military Sciences

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Rules of Engagement for armed forces, with special regard to the participation of Hungarian National Defence Forces in crisis response operations

Doctoral (PhD) thesis Abstract

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1. THE SIENTIFIC PROBEM

The corps of the Hungarian Defence Forces have been participating in multi-national crisis response operations for decades, under the command of various international organisations or in other forms of cooperation. Most of these international organizations, as well as many of the cooperating partner countries, have already introduced and continue to successfully apply the Rules of Engagement (ROE) system. Despite the fact that the Hungarian national regulations and relevant military doctrines refer to these provisions and order to take them into account while performing service abroad, domestic doctrinal background providing theoretical foundation for the Rules of Engagement and national legislation enabling their practical implementation are completely non-existent. A likely reason being the lack of scientific analytical studies in Hungarian, which closely discuss, examine the different aspects of the Rules of Engagement to a greater depth, reveal the connections and contradictions, present both the advantages and disadvantages of their application, and, based on the above, formulate suggestions if required. As a matter of fact, apart from the studies dealing with the law of armed conflict or in more common terms, the law of war, the examination of other regulations determining the method and means of military involvement in crisis response operations has escaped the notice of experts working in the subject area to date. Consequently, in the absence of a comprehensive but sufficiently detailed analytical works in Hungarian, even the narrow professional circle has only limited information about the actual role, essentials, and main provisions of the mentioned regulations.

It is a well-known fact among those who have been involved in multinational military operations that the soldiers of each nation have different information regarding the contents of the ROE. For soldiers of the countries that have created their own national ROE system, developed the relevant doctrines (see U.S., Great Britain, Canada, Turkey), the application of the Rules of Engagement is an entirely self-evident task. Soldiers of other nations may have heard or read about the existence of these provisions, but they have incomplete knowledge of the subject matter of the regulations.

Another reason for this is the fact that the knowledge transfer of relevant rules is hindered by information security barriers (mission-specific Rules of Engagement are considered as classified information for obvious reasons). In addition, in the absence of relevant experience, understanding the otherwise available rules may also represent a problem in many cases. Although it may be obvious for all that the ignorance of the law is no excuse, violation of the ROE does not necessarily results in criminal or disciplinary sanctions: the question of liability primarily depends on what legal character (binding force) are the Rules of Engagement conferred with by the national regulations of the specific nation.

There is no doubt, however, that non-compliance with the rules concerning an operation makes the legality of the operation itself doubtful and thus jeopardizes the wide-scale social perception, political – and even financial – support of the mission. Moreover, the lack of information regarding the Rules of Engagement is fraught with a lot of danger regardless of the binding nature of the rules. Application of different national regulations for armed forces of countries participating in allied (coalition) operations can easily lead to the cooperating parties to react differently to the same situations due to their own national provisions, which may have unintended consequences in some cases.

Uniform task implementation corresponding with the intentions of the commander in charge of a multinational operation requires the reduction of differences between the national rules to a minimum, creating the highest level of consistency. Rules of Engagement issued for a given mission serve this purpose; these allow the competent commander of the armed forces to set out the conditions and limitations under which their subordinate armed force can be used, while remaining within the framework specified in the decision of the higher-level political governing body, and taking into account operational circumstances as well. Furthermore, the military corps of countries participating in multinational operations are required to fully comply with these regulations, and to reduce national limitations complicating or precluding the implementation of the operation to the lowest possible level.

Therefore, coordinated execution of tasks with the intent of fulfilling a common objective requires knowledge of the Rules of Engagement and the main principles promoting their implementation. In other words, to acquire a basic knowledge of the Rules of Engagement is necessary for every soldier but in case of those participating in multinational operations, it is their fundamental interest to do so. This effort is reinforced by, among others, the NATO requirement, which specifies that any member of the armed forces of all NATO members, who may be obliged to use force either in self-defence or for mission accomplishment, shall receive appropriate training concerning the Rules of Engagement and the associated NATO doctrines.

In my thesis, while keeping the necessity of the above mentioned knowledge sharing in mind, I aimed to highlight the difficulties arising during the development, interpretation and implementation of the Rules of Engagement, the 'traditionally' problematic areas, and the potential areas for further scientific researches on the subject, based on the related documents of leading international organizations in crisis response operations, the most significant findings of the literature on the object, and using practical experience. I supplemented my conclusions drawn as a result of the analytic work with recommendations, which – in my opinion – provide the foundations necessary to start the codification work with regard to national Rules of Engagement, and to develop the required doctrines.

2. HYPOTHESES

With regard to the examination of the subject matter, I set up the following hypotheses:

- The Hungarian translations of the term 'Rules of Engagement', as well as the Hungarian definition of the provisions related to the subject matter, which are considered official, do not accurately reflect the essence of the term or the definition.
- 2) There exists a clearly identifiable written body of law, which can be comprehensively defined as "operational law".
- 3) The simultaneous existence of Rules of Engagement set forth both on international and national level does no hinder participation in multinational operations; any discrepancies that may occur can be resolved. Multilateral operations necessarily entail national restrictions.
- The Law of Armed Conflict and the Rules of Engagement are related but constitute two distinctly separate systems.
- 5) Responding to a hostile act or hostile intent is not identical to acting in self-defence.
- 6) In case of soldiers, self-defence is to be interpreted differently from civilians.
- Since the application of modern technology in military operations has become widespread, a new type of Rules of Engagement with different content is to be established.
- 8) The development of a national ROE doctrine and the national-level application of a ROE system would make the task execution of the Hungarian Defence Forces more effective.

9) The level of ROE knowledge is insufficient among the personnel of the Hungarian Defence Forces; therefore, special attention should be paid to training and preparation in this regard.

3. RESEARCH OBJECTIVES

In order to validate the above hypotheses, I set a target to summarize the key principles, provisions, and main practical experience related to the development of Rules of Engagement through presenting and analysing national and international examples, from which I draw general conclusions, as well as specific conclusions regarding the Hungarian Defence Forces, and formulate proposals on the application of the Rules of Engagement by the Hungarian Defence Forces, and on the establishment of the national Rules of Engagement system, as well.

During the scientific research of the subject, I aimed to:

- present the findings in the Hungarian literature, which are contradictory and, found in a negligible number, as well as the incorrect translations of the English doctrines;
- explore the key findings, proposals for solutions contained in the relevant foreign language literature, their analysis and organization supplemented by personal experience;
- remedy the lack of and supplement Hungarian publications through scientific processing of the foreign-language literature on the subject, in order to raise awareness of the topic in wider professional circles;
- create new definitions in connection with the subject;
- visually represent suitable correlations based on a new approach;
- reveal the factors negatively affecting the development, content and application of the Rules of Engagement, give a more detailed presentation of these factors, and formulate proposals for reducing their impact;
- assess the level of knowledge of the Rules of Engagement among the personnel of the Hungarian Defence Forces and, if necessary, make proposals for trainings and teaching courses with regard to this subject;
- explore the deficiencies and inconsistencies regarding the subject that exist in the Hungarian legislation; formulate proposals for national codification.

4. RESEARCH METHODS

During the scientific research of the subject and the preparation of this thesis, I used the following scientific research methods:

- collecting and collating domestic and foreign (mainly English) literature on the topic of Rules of Engagement, analysis and synthesis of their primary findings;
- formulating own opinion in connection with the main findings of the cited authors (agreement, disagreement with explanation);
- analysis of the main components of the Rules of Engagement and their impact;
- comparing the contents of definitions relating to the same subject matter (e.g. Rules of Engagement, operational law), synthesis of important provisions, creating individual definition on their bases;
- conducting independent research through the use of own questionnaire, drawing conclusions from the responses received using induction and deduction.

5. STRUCTURE OF THE THESIS, BRIEF DESCRIPTION OF THE RESEARCH

The thesis, in addition to the Introduction (Chapter 1) and Conclusion (Chapter 11), is made up of nine separate chapters. The chapters are divided into four logically distinct themes.

The first topic provides general information regarding the Rules of Engagement. Accordingly, the thesis begins with the presentation and comparative analysis of ROE definitions found in the relevant literature (Chapter 2), and – still in generic terms – it goes on to study the legally binding character of the ROE, and present the restricting or authorizing nature of ROE provisions.

To understand the real essence of the Rules of Engagement, it is vital to know the factors determining their formulation and contents, therefore an important part of the thesis is a more detailed analysis of these factors (Chapter 3). By virtue of their special correlation and in order to highlight their differences, a separate subsection deals with the relationship between ROE and Law of Armed Conflict.

The thesis then discusses the national and international levels of the relevant system of rules, and introduces the procedures related to the development of Rules of Engagement applied by the international organizations most interested in crisis response operations

(Chapter 4). The section on general issues is concluded by outlining the scope of duties of the legal advisor with regard to ROE.

The logically distinct second topic focuses on specific dilemmas arising from the implementation of multinational crisis response operations. The national caveats play a major role among the factors affecting multinational cooperation; therefore, they are presented in a separate chapter (Chapter 5), emphasising their negative impact on the application of the Rules of Engagement, and, indirectly, on the effectiveness of the operation. This chapter is followed by the presentation of the concept of escalation of force (Chapter 6), a further understanding of which is sought to be promoted by a description of the main provisions related to the use of lethal and non-lethal force. Since one of the most difficult and controversial issues regarding the application of the Rules of Engagement is the identification of hostile act and hostile intent and the appropriate response to them, these issues are discussed in separate subsections within the chapter.

The series of specific issues not directly related to the range of subjects of the Rules of Engagement, that is the third group of the logical themes, is opened with one of the neuralgic points of the implementation of crisis response operations, a detailed study of the issues of self-defence (Chapter 7), discussing the dilemma about self-defence of soldiers separately and in detail. The analysis of the ROE related to new technologies takes place in this part of the thesis (Chapter 8).

The fourth logical part approaches the issue of the Rules of Engagement from the point of view of the Hungarian Defence Forces, taking into account the Hungarian legislation (Chapter 9). First of all, it analyses whether there is a need to develop national Rules of Engagement. This line of thought is followed by three methodological proposals: the first about the development and contents of the Hungarian ROE doctrine, the second makes a recommendation for a ROE Annex to the operation plan, and finally the third subsection in this topic aims to assist the creation of national ROE.

With particularly attention to the deficiencies in knowledge about ROE provisions, as referred to in the theses several times, an individual chapter (Chapter 10) intends to draw attention to the importance of knowledge transfer on the ROE and trainings related to this subject. Findings on the lack of knowledge are supported by the presentation of the survey results conducted with regard to this subject matter in a separate annex.

6. SUMMARY OF CONCLUSIONS

- The examples presented in this thesis demonstrate that the Hungarian translations of the term "*Rules of Engagement*" used in military terminology do not reflect the real nature, content and purpose of the relevant provisions. Considering this fact, the introduction of a new Hungarian term is justified.
- A subset of written legislation and unwritten practices relating to its implementation can be identified, to which the professional literature – without relevant definition – refers as "operational law"; its content and the scope of relevant rules always depend on the specific operation.
- 3) It is now confirmed that specific national interests and special national regulations may affect multilateral cooperation in many areas. If the Rules of Engagement created on international and national level are in conflict, these conflicts can be resolved through national caveats.
- 4) It was demonstrated in detail that Law of Armed Conflict and Rules of Engagement are linked in some areas but constitute two distinctly separate systems. LOAC indicates a framework for the application of the ROE, and the ROE are a useful tool to ensure that LOAC provisions are not violated.
- 5) It was confirmed through examples that it does not cause particular problems if the national ROE discuss in the issue of self-defence in detail. This is unfortunate, however, in case of the multinational ROE, where it is still recommended to refer back to the national regulations, instead of regulating the topic of self-defence.
- 6) It was demonstrated that the issue of self-defence should be viewed from a unique perspective in the case of soldiers, and the right of self-defence is to be interpreted differently than in the case of civilians in many respects. The reason for this is, on the one hand, the assumption of higher levels of risk, on the other hand, limitability of the right of self-defence with respect to operational aspects.
- 7) It was explained in detail that response to the hostile act and hostile intent falls within the circle of protective mechanisms but is not identical to self-defence action. Special emphasis is given to the fact that differences due to narrower or broader national interpretations of self-defence, without proper communication, may seriously jeopardize successful execution of the tasks.

- 8) Several arguments presented in this thesis support the idea that due to the military application of modern technology, Rules of Engagement of a new type and content are to be developed, which specifically address the issues concerning the application of machines. However, if the task is carried out independently by machines, this requires ROE provisions, whose content can be interpreted and implemented by machines.
- 9) It is recorded that no uniform document exists in respect of the Hungarian Defence Forces, which deals exclusively with the Rules of Engagement, the required or authorized ways and tools for the use of force. In this regard, the Hungarian regulations are extremely complex, too detailed and inflexible for successful task execution.
- 10) It can be concluded from the responses given to the questions of the survey created specifically for this purpose that the level of knowledge on the ROE among the personnel of the Hungarian Defence Force is not adequate; hence it is necessary to increase the number and raise the standard of specific trainings in this matter.

7. NOVEL SCIENTIFIC RESULTS

On the basis of the contents of the thesis I consider the following as novel scientific results:

- I created a new definition of the "Rules of Engagement", which is different from the definitions that can be found in the relevant regulations and foreign literature on the subject; I defined "operational law", specifying the scope of the rules that can be implied within the scope of this concept related to a specific operation.
- 2. I presented the relationship between Rules of Engagement and the factors determining them with a novel approach and I demonstrated the process of proposing and approving new ROE requests and the delegation of the approved ROE.
- 3. I conceptualised/demonstrated the difference between the concept of "escalation of force" and that of "judgment based use of force", and the effect of classification as enemy and the level of risk perception on the likelihood of use of weapon.
- 4. I presented the terms of hostile act/hostile intent/attack in a summary chart in the context of the severity, nature and proximity of danger, as well as the need for the ROE.
- 5. With the help of the questionnaire for assessing the knowledge of the ROE, I drew conclusions regarding the respondents' knowledge of ROE, and formulated recommendations for reforming the ROE training and improving its efficiency.

6. I made a proposal with regard to the content of the national ROE doctrine to be developed in the future, the contents of the ROE Annex to the operation plan to be developed in the future as well as the procedure of developing national ROE for specific operations.

8. RECOMMENDATIONS AND PROPOSALS

Based on the above outlined findings, I make the following recommendations and proposals:

- 1. In order to develop national regulations and doctrines, when the Hungarian translation of foreign documents is used, it is always to be professionally proof-read and their content is to be adjusted to the national context and legislation.
- 2. A Hungarian ROE system is to be developed together with the associated procedures and documents; decision-making persons and authorities are to be appointed.
- 3. The rules on the wording of national caveats for Hungarian participation in multinational operations, on the associated decision-making process, and on keeping the competent international organisation informed are to be specified.
- 4. The factors determining the content of the ROE and their impact require further research.
- 5. The non-military aspects of Rules of Engagement are to be studied (e.g. policing or other law enforcement activity of military forces).
- 6. It would be reasonable to examine the level of knowledge of the Rules of Engagement within the Hungarian Defence Force more extensively using the ROE questionnaire or an improved version of it in order to identify the areas of incomplete knowledge, and to determine the necessity of training and its comprehensiveness.
- 7. Training methods and aids are to be developed, through which theoretical ROE knowledge can be converted into practical application.
- 8. The possibility of teaching the ROE subject to non-military persons (politicians, journalists, civil researchers) is to be considered.

9. PRACTICAL APPLICATIONS OF RESEARCH RESULTS

The present thesis, and the findings contained therein may be used for:

a) targeted review of national legislation, drafting new proposals for codification;

- b) development of the content of a national ROE doctrine, development of a ROE Annex to the operation plan of a specific operation, effectively conducting a procedure targeted at formulating the rules for the execution of a specific operation;
- c) effective preparation of the appointed personnel of the Hungarian Defence Forces (e.g. commanding officers, serving in the legal field), as well as teaching non-military persons (e.g. politicians, journalists, civil researchers) about the subject matter of the Rules of Engagement;
- d) further research in the ROE subject.

10. THE AUTHOR'S PUBLICATIONS IN THE SUBJECT

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11. PROFESSIONAL, SCIENTIFIC BIOGRAPHY

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- 2012 Rules of Engagement Workshop, Sanremo (Italy)
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- 2010 Advanced NATO Operational Law Course, NATO School, Oberammergau (Germany)
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- 2007 Conventional Targeting Course, NATO School, Oberammergau (Germany)
- 2004 Central Course for the Officers applied from the civilian life and not having military education, 'Zrínyi Miklós' National Defence University, Budapest (Hungary)
- 2003 8th International Military Observer Course, Szolnok (Hungary)
- 2003 Law of Armed Conflict, 98th International Military Course, International Institute of Humanitarian Law, Sanremo (Italy)
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- 2001 Human Rights in Modern Peacekeeping, Pearson Peacekeeping Centre, Cornwallis Park, Nova Scotia (Canada)

- 2000 Legal practice, Department of Law, Bundesministerium der Verteidigung, Bonn (Germany)
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- 27 November 2013 *Efforts for codification of the military use of robot technic* 13th Robot Warfare Conference, Budapest (Hungarian Association of Military Science, National University of Public Service)
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- 24 May 2011 Hungarian claims procedure based on NATO SOFA and relevant experiences "Contemporary Military Science" Conference series, "NATO Agreement concerning the status of forces stationing abroad (60th Anniversary of the NATO-SOFA)" Professional-scientific Conference, Budapest (Hungarian Association of Military Science, Miklós Zrínyi National Defence University, Hungarian Association of Police Science, Hungarian Society for Military Law and Law of War)
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- 24 September 2009 *NATO Rules of Engagement* Hungarian Defence Forces legal Conference, Balatonkenese (HUN MoD, Legal Department)