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RULES OF ENGAGEMENT AS AN EXAMPLE OF A SECURITY PROTOCOL CONSTITUTING A “CODE OF CONDUCT” IN MILITARY OPERATIONS

ABSTRACT Rules of Engagement (ROE) constitute a structured framework guiding the use of lethal force within specific operational contexts, blending legal, policy and operational considerations. Primarily, they empower commanders to oversee military operations effectively while providing soldiers with clear directives for conduct on the battlefield. ROE align with the security protocol theory, defining a set of rules that rationalise and legitimise complex security measures and their enforcement. As a *sui generis* code of conduct, ROE function as a security protocol within military operations, serving as a normative system facilitating the implementation of legal and strategic objectives. Unlike generic protocols, ROE are intricately shaped by political goals, military requirements and legal norms, manifesting as detailed operational guidelines. Thus, ROE serve as a code facilitating the application of law and the pursuit of political and military aims during operations. This paper seeks to elucidate the nature and significance of ROE in contemporary warfare, exploring their compatibility with the security protocol model and examining any unique attributes that distinguish them within this framework.

Keywords: theory of protocolarisation, security protocol, rules of engagement, ROE, military operations, armed conflicts, law of armed conflict

1. INTRODUCTION

This article is a partial result of research conducted within the framework of a scientific project titled *Security Protocol: A Theory of Protocolarisation and Its Application*.¹ The general aim of this project is to make a novel contribution to social sciences by constructing and refining the concept of protocol as a formula that frames the ontology and epistemology of social phenomena as empirical generalisations. As for the 'protocolarisation' itself, it is assumed to be a key factor in ensuring continuity in security environments and in greatly facilitating security governance and crisis management in contemporary complex social and political systems. Protocolarisation is conceived as a process of enactment, reproduction and communication of simplified messages that strengthen the exercise of control over actors in decentralised systems.² Thus, protocol refers to security as a process of managing uncertainty in conditions of limited cognitive abilities and imperfect knowledge of reality. Security protocol is defined as a codified system of rules and procedures that rationalise, legitimise and explain the complex forms, methods and measures of security and the procedures for their enforcement. Security protocol serves as a relatively stable normative framework that validates the modes and approaches to managing, regulating and controlling systems. These protocols come into play when sudden issues or prolonged crises threaten the effectiveness and stability of a network and its components, aiming to ensure consistent and secure operation. By simplifying codes and delivering clear messages, protocols streamline decision-making and action, thus minimising reflection and deliberation. In doing so, they supplant extensive normative structures and intricate rules that may struggle to address disturbances and interruptions during critical situations.

Taking the above assumptions into account and starting from the basic understanding of protocol (proposed by A.R. Galloway) as a 'system of management',³ the project's researchers have undertaken an attempt to formulate a universal security protocol model that could be applicable in various and diverse situations and environments where ensuring security and its management plays an extremely important role. The next step in this project is to verify the protocolisation theory in four case studies, differentiated by three main determinants: norms, structures and power. These cases focus on the diversity of security protocols; however, to facilitate the conceptualisation of the protocol, specific parameters apply to them, enabling us to capture the essence of protocols and protocolarisation. These parameters include the following: (en)actant (who enacts the protocol?); actor (who reproduces the protocol?); message (what contents are embedded in the protocol?); formalisation/legitimation (how is the protocol structured and legitimised?); frame/platform (where is the protocol

¹ This research was funded in whole by the Polish National Science Center, grant number 2021/43/B/HS5/02324.

² A.R. Galloway, *Protocol: How Control Exists after Decentralization*, London 2004, p. 7.

³ Ibid., p. 21.

running?); and (infra)structure/networks (how is the protocol founding/grounding/underpinning a networked field?).

Assuming, tentatively, that security protocol is a codified system of rules and procedures that rationalise, legitimise and explain complex security forms, methods and measures, as well as the procedures for their enforcement, the author of this article concluded that the rules of engagement (ROE) may serve as an example of a security protocol in relation to its military dimension as ROE can be seen as a *sui generis* code of conduct that generally performs three basic functions: to serve as a control mechanism during the transition from peacetime to combat operations (armed conflict); to offer standing force protection authority and guidance to unit commanders and individual soldiers regarding self-defence rules; and to establish a command and control framework for national command authorities and military leaders to ensure that the use of military force aligns with strategic political and military objectives.⁴ In their most basic form, ROE mean *orders regulating the use of force and offensive actions by military units in the face of an adversary*.⁵ They play a two-fold role: they provide commanders at the operational and tactical levels with greater control over the implementation of military operations by their units; and they provide soldiers with clear guidelines on what is permissible on the battlefield. Thus, ROE can be treated as a protocol in the form of a code (set of rules) that facilitates the application of law and enables the most effective implementation of political and military goals during military operations. Indeed, the primary purpose of ROE are to enable the attainment of operational objectives and safeguard the deployed forces⁶ – therefore, effective ROE are crucial for achieving the mission. Concurrently, they should *allow maximum flexibility for mission accomplishment while providing clear, unambiguous guidance to the forces affected*.⁷

In this article, the author analyses the key definitional elements and characteristic features of ROE regarding their compatibility with the draft concept of a security protocol, employing the aforementioned protocol parameters to demonstrate the extent to which ROE fit into the security protocol model. These considerations are preceded by a brief discussion of the defining elements of ROE and an explanation of their increasing importance in contemporary military operations, not only those conducted during armed conflicts. Since ROE take the form of written documents, the most suitable research method to achieve this goal is content analysis of these documents to identify their characteristics that would meet the requirements of the protocol parameters.

⁴ G.P. Corn, "Developing Rules of Engagement: Operationalizing Law, Policy, and Military Imperatives at the Strategic Level," in G.S. Corn, R.E. VanLandingham, S.R. Reeves (eds), *U.S. Military Operations: Law, Policy, and Practice*, Oxford 2016, p. 219.

⁵ J.F.R. Boddens Hosang, *Rules of Engagement and the International Law of Military Operations*, Oxford 2020, p. 10.

⁶ M. Faix, "Rules of Engagement – Some Basic Questions and Current Issues," *Czech Yearbook of International Law*, vol. 1 (2010), p. 133.

⁷ G.P. Corn, "Developing Rules...", p. 241.

However, in the case of ROE, the application of this method encounters certain difficulties associated with ensuring the safety of military personnel to whom ROE are addressed. Generally, states and international organisations involved in establishing ROE regard them as sensitive information, often classified as confidential. Consequently, access to these rules is restricted to a select group and their disclosure to external parties is prohibited. The reason is quite obvious – since ROE outline the situations where force may be used or actions that could be viewed as provocative, disclosing these regulations, including both standing and long-term ROE, would provide a considerable advantage to an adversary in an armed conflict or any other military operation.⁸ In other words, the confidential nature of ROE primarily stems from the concern that knowledge of applicable ROE could be used against the armed forces adhering to these rules. An adversary, knowing the ROE, would have the assurance that, up to a certain point, its forces – despite engaging in armed actions – could not be attacked.⁹ This is of particular significance in the case of asymmetric conflicts, as well as counter-insurgency (COIN) operations. In these modern conflicts and operations, the determination and capacity to sustain military campaigns are impacted not only by strategic achievements in combat, but also by public perception and information regarding the conduct of the operation. Acquiring access to an adversary's ROE can greatly amplify the potential for exerting influence over their actions, reactions or capacity to counter one's own manoeuvres, thereby influencing the trajectory of the operation and offering ample opportunity to shape the outcome of engagements to produce visible setbacks or defeats.¹⁰

Thus, in principle, limited access to the source material on the subject matter impedes any significant examination of ROE. Fortunately, secondary sources significantly facilitate the study of these rules – namely, a considerable number of conceptual articles (and in recent years also monographs) devoted to ROE and related issues. The value of these publications is particularly high because, in most cases, the authors of these works are military lawyers who possess not only theoretical knowledge in the field of ROE, but also practical experience in this matter – as they often had the opportunity to develop ROE for the armed forces in which they served as legal advisors.¹¹ It should also be noted that some states, after the completion of a military operation, occasionally make the ROE that were in force during that operation available – especially the

⁸ J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 3; M. Faix, *Rules of Engagement...*, p. 134.

⁹ See M. Żeligowski, "Zasady użycia siły jako podstawa wyłączenia odpowiedzialności karnej z uwagi na błąd co do prawa," in P. Hofmański (ed.), *Kluczowe problemy procesu karnego*, p. 187. See also W.H. Boothby, *The Law of Targeting*, Oxford 2012, p. 481.

¹⁰ J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 3. Cf. G.R. Phillips, "Rules of Engagement: A Primer," *The Army Lawyer*, vol. 7 (1993), pp. 4-5; K.B. Sandvik, "Regulating War in the Shadow of Law: Toward a Re-Articulation of ROE," *Journal of Military Ethics*, vol. 13, no. 2 (2014), p. 126.

¹¹ Among the authors worth mentioning are J.F.R. Boddens Hosang, C. Guldahl Cooper, G.P. Corn, R. McLaughlin, and G.D. Solis. Relevant publications by these authors are cited in this article and listed in the bibliography. See also R. McLaughlin, "Protecting Civilians in Armed Conflict Through Rules of Engagement," in D.W. Lovell, I. Primoratz (eds), *Protecting Civilians during Violent Conflict: Theoretical and Practical Issues for the 21st Century*, Farnham 2012, p. 94 and the literature cited there.

United States, which declassifies its ROE (or at least the derivative soldier's cards/ROE cards) when the operation in question has come to an end.¹² Furthermore, while revealing the ROE in the case of states would contradict fundamental principles of warfare, such as ruses of war and surprise, in the case of operations conducted by international organisations – particularly broadly defined peace support operations – such disclosure could prove beneficial by increasing public awareness of the roles and responsibilities of peacekeepers. Therefore, ROE developed by international organisations are more accessible to the public, as exemplified by the ROE used in UN operations.¹³

As regards NATO, it is worth mentioning that ROE, for specific operations, are developed based on a standardised (and unclassified) set of ROE specified in the Military Committee Decision MC 362/1 *NATO Rules of Engagement*.¹⁴ They determine when, where, how and against whom force may be used during NATO military operations and consist of both permissions for and restrictions on the use of force and other provocative actions. Another very helpful thing for both for scientific researchers and military practitioners is also the *Sanremo Handbook on Rules of Engagement*, prepared under the auspices of the International Institute of Humanitarian Law in 2009.¹⁵ The aim of the authors of this handbook was to create uniform, comprehensive, realistic and transparent guidelines that each state can utilise for both training and educational purposes, as well as for developing a certain standard for ROE in specific military operations.¹⁶ As a result, the content of the handbook reflects best practices in the application of ROE by various states worldwide.¹⁷

Taking the above into consideration, the information, observations and conclusions contained in these sources are sufficient for a general analysis of the defining elements, nature and significance of ROE in conducting military operations. They also allow for determining the degree of their alignment with the assumed security protocol model.

¹² For example, one can find online the American soldier's card that were in effect during the *Provide Relief* operation in Somalia (JTF SJA SER#1, December 2, 1992) or the ROE card used during operation *Iraqi Freedom* (CFLCC ROE Pocket Card, 252030, November 2003). Several examples of U.S. ROE cards are also provided in: G.D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, Cambridge 2022, pp. 393-396.

¹³ A number of examples of UN ROE can be found in: T. Findlay, *The Use of Force in UN Peace Operations*, Oxford 2002, Appendix 2 (pp. 411-424) and Appendix 3 (pp. 425-427).

¹⁴ North Atlantic Military Committee, *MC 362/1: NATO Rules of Engagement*, June 2003 (hereinafter: *NATO ROE*).

¹⁵ A. Cole, Ph. Drew, R. McLaughlin, D. Mandsager (Drafting Team), *Sanremo Handbook on Rules of Engagement*, Sanremo 2009 (hereinafter: *Sanremo ROE Handbook*). It is worth adding that in 2022, the second edition of this handbook was released, incorporating the experience and lessons learned from the application of the first edition over more than a decade. The so-called *Newport ROE Handbook* builds on the successes of the first edition of the handbook and the revision includes several significant changes as reflected in the summary of changes (see D. Mandsager, A. Cole, Ph.J. Drew, R. McLaughlin (Drafting Team), "Newport Rules of Engagement (ROE) Handbook," *International Law Studies*, vol. 98 (2022), pp. 1-110).

¹⁶ *Sanremo ROE Handbook*, p. v.

¹⁷ *Sanremo ROE Handbook*, p. ii.

2. RULES OF ENGAGEMENT – DEFINING ELEMENTS

In principle, definitions of ‘rules of engagement’ may vary in certain details depending on who formulates these rules and for what purposes. This is somewhat related to the fact that in some states, articulated ROE have the status of guidance for military forces, while in other states, ROE constitute lawful command. For instance, according to the *United Kingdom Manual of National Rules of Engagement*, ROE are *directives issued by a competent military authority which specify the circumstances and limitations under which forces undertaking any military action will operate (...). ROE encompass political direction together with operational and legal provisions for using force to inform commanders of constraints imposed, or freedoms permitted. ROE are not a comprehensive statement of either law or policy, although they take account of both. ROE do not assign specific tasks or issue tactical instructions, though actions may be restricted either to ensure compliance with law or political objectives. The absence of an authorising rule, where a rule would be required in the ROE profile, denotes prohibition.*¹⁸ The United States Department of Defense, in Joint Publication 1-02, *Dictionary of Military and Associated Terms*, defines ROE as *directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered*,¹⁹ whereas the Norwegian Manual of the Law of Armed Conflict states that ROE are *directives issued by competent authorities that regulate the circumstances under which military force may be used, and what type and degree of force that may be applied in those circumstances.*²⁰

As regards international organisations, in NATO document MC 362/1 ROE are defined as *directives to military forces (including individuals) that define the circumstances, conditions, degree, and manner in which force, or actions which might be construed as provocative, may be applied.*²¹ As for the UN, in *Handbook on United Nations Multidimensional Peacekeeping Operations* of 2003: *the rules of engagement for the peacekeeping operation will clarify the different levels of force that can be used in various circumstances, how each level of force should be used and any authorisations that may need to be obtained from commanders.*²² Such ROE *...are tailored to the specific mandate of the mission and the situation on the ground.*²³

¹⁸ United Kingdom Ministry of Defence, *United Kingdom Manual of National Rules of Engagement*, JSP 398, part 1: *Directive*, July 2019, p. 1, paras 4-5.

¹⁹ United States Department of Defense, *Department of Defense Dictionary of Military and Associated Terms*, Joint Publication 1-02, November 2010, p. 207.

²⁰ Forsvaret, *Manual i krigens folkerett*, 2013, cited in: C. Guldahl Cooper, *NATO Rules of Engagement: On ROE, Self-Defence and the Use of Force during Armed Conflict*, Leiden–Boston 2020, pp. 28-29.

²¹ *NATO ROE*, p. 2.

²² United Nations, *Handbook on United Nations Multidimensional Peacekeeping Operations*, New York 2003, p. 57.

²³ *Ibid.*, p. 140.

The authors of the above-mentioned Sanremo Handbook on ROE propose a clear and comprehensive definition of these rules. According to the handbook, *ROE are issued by competent authorities and assist in the delineation of the circumstances and limitations within which military forces may be employed to achieve their objectives.*²⁴ The authors of the handbook also explain that: *ROE appear in a variety of forms in national military doctrines, including execute orders, deployment orders, operational plans, or standing directives. Whatever their form, they provide authorisation for and/or limits on, among other things, the use of force, the positioning and posturing of forces, and the employment of certain specific capabilities. In some nations, ROE have the status of guidance to military forces; in other nations, ROE are lawful commands.*²⁵

In general terms, therefore, ROE specify the degree and manner in which force may be employed and aim to ensure that the use of force is subject to control and is lawful. In the most basic definition, they are *rules governing the use of force and actions which can (potentially) influence or regulate the escalation of the use of force or hostilities in the area of operations.*²⁶ The main purpose of ROE is to *control actions and behaviour which (directly) relate to or influence the behaviour of (potential) hostile forces and thereby (attempt to) maintain control over, or influence, the overall conduct of the parties and the use of force in the theatre of operations.*²⁷ However, these are not tactical rules; ROE do not instruct soldiers on how to execute missions, although tactics and ROE undoubtedly complement each other.²⁸ They inform commanders about imposed restrictions and the degree of freedom they have during mission execution.²⁹ In other words, ROE do not normally dictate how a result is to be achieved but will indicate what measures may be unacceptable. Based on the above definitions, two key elements of ROE can also be defined, either explicitly or implicitly: that the rules of engagement are directives issued by specific higher authorities and directed to the armed forces under their command; and that they contain, at the very least, rules regarding the use of force.³⁰

It should be underlined, however, that ROE are often broader than some of the above definitions would indicate. Besides authorising or restricting the use of force, including delineating the various levels of force applicable in diverse situations, ROE frequently encompass directives on the positioning and posturing of forces, the employment of specific capabilities, the management and disposition of captured or detained

²⁴ Sanremo ROE Handbook, part 1, para. 3, p. 1.

²⁵ Ibid.

²⁶ J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 19.

²⁷ Ibid., p. 21.

²⁸ See G.D. Solis, *The Law...*, p. 373 (*ROE are designed to provide boundaries and guidance on the use of force that are neither tactical control measures nor substitutes for the exercise of the commander's military judgment*). Cf. Sanremo ROE Handbook, para. 3 (*ROE are not used to assign missions or tasks nor are they used to give tactical instructions*).

²⁹ B.F. Klappe, "International Peace Operations," in D. Fleck (ed.), *The Handbook of International Humanitarian Law*, Oxford 2008, para. 1320, p. 658.

³⁰ Cf. R. McLaughlin, "Protecting Civilians...", p. 95.

individuals and any delegation or withholding of authorities concerning the approval of these actions. Ultimately, ROE serve as a pivotal command and control tool, intended to provide military and political leadership with heightened oversight over the conduct of operations, whether combat-related or otherwise, by subordinate forces.³¹

3. THE SIGNIFICANCE OF ROE IN CONTEMPORARY MILITARY OPERATIONS

Contemporary military operations (and, specifically, combat operations) are incredibly complex and dynamic undertakings that require precise regulations. This precision is particularly important in the case of the use of force. Excessively aggressive or, worse, unlawful use of force can quickly undermine the legitimacy of military operations and pose a strategic failure. On the other hand, commanders and soldiers who are too uncertain and indecisive in the face of mortal threats can quickly lead to unnecessary casualties and mission failure. Guidelines regarding the use of force must be appropriately tailored to the circumstances and operational environment while also being consistent with the law, policy and military imperatives.

The risks described above, stemming from the overly hasty and possibly indiscriminate or, conversely, excessively cautious use of force, have been greatly magnified in an era dominated by armed conflicts fought by non-state actors and by private military corporations and security providers in the age of aggressive information warfare. The formidable and inherent challenges of effectively gauging the appropriate use of force, evident during the peak of *Military Operations Other Than War* (MOOTW), appear minor when compared to the intricacies faced in politically and legally ambiguous operational landscapes such as counterinsurgency, counter-terrorism and stability operations in regions like Iraq and Afghanistan. As MOOTW, such as UN peacekeeping missions, become more prevalent and evolve in quality over recent decades, the use of force has emerged as one of the most pressing concerns confronting the international community. Moreover, emerging forms of warfare are coming to the forefront as warring parties utilise unmanned systems and cyberattacks on computer networks.³²

These facts highlight the significant practical relevance of ROE in the everyday context of international security. ROE are indeed a key tool of command and control in military operations. They aim to provide military and political leaders with greater control over the execution of operations (both combat and non-combat) by the forces under their command. Therefore, the development and execution of effective ROE are pivotal for the success of contemporary military actions. They constitute a fundamental element of operational planning and implementation across all levels of command, requiring alignment with and reinforcement of national policy objectives, legal

³¹ G.P. Corn, "Developing Rules...", p. 212.

³² G.P. Corn, "Developing Rules...", p. 218; M. Faix, "Rules of Engagement...", pp. 133-134; K.B. Sandvik, "Regulating War...", p. 120.

principles and the operational concept. As directives guiding operations, ROE fall under the purview of the commander and their operations staff element.³³ An absence of appropriate ROE may not only cause a general failure of the operation, but may also endanger the deployed forces.³⁴

Currently, it is difficult to imagine any military operation being conducted without ROE tailored to its mandate.³⁵ ROE are being issued and implemented in a wide spectrum of operations – comprising not only cases of international armed conflict, but also non-international armed conflicts and an entire spectrum of other types of operations involving the potential use of force.³⁶ Rules of engagement are also established for peacekeeping operations (conducted under the auspices of the UN or regional organisations)³⁷ or for already mentioned MOOTW³⁸ and may also be developed for armed forces operating in areas affected by armed conflict and belonging to a state that is not a party to that conflict.³⁹ It should be emphasised, however, that the type of operation has a decisive impact on the scope and content of the ROE. In the case of operations conducted during peacetime (e.g., humanitarian operations) or in the period preceding the outbreak or escalation of armed conflict, force can only be used within the authorisation provided by the ROE (while observing two important principles – restraint and legitimacy), and the only exception to this rule is the use of

³³ G.P. Corn, “Developing Rules...”, p. 212.

³⁴ M. Faix, “Rules of Engagement...”, p. 141. Cf. K.B. Sandvik, “Regulating War...”, p. 118 (*In all circumstances, appropriately drafted and implemented ROE are of central importance to force protection and mission accomplishment*).

³⁵ As G.D. Solis aptly observed, summarising the application of ROE by the US Army: *A half-century of experience indicates (...) that, for combat operations involving large units, ROE are necessary on the modern battlefield* (G.D. Solis, *The Law...*, p. 368). It should be noted that ROE were first used by the US military (ibid., pp. 368-369. See also K.B. Sandvik, “Regulating War...”, p. 121).

³⁶ M. Faix, “Rules of Engagement...”, p. 136.

³⁷ Such rules were prepared, for example, for Polish soldiers participating in the European Union operation EUFOR in Bosnia and Herzegovina (see “Wieloaspektowość wyzwań przy opracowywaniu zasad podejmowania działań przy użyciu siły,” *Międzynarodowe Prawo Humanitarne*, vol. 3 (2012), pp. 35-37).

³⁸ These operations are also referred to as “operations below the threshold of war” and involve the use of military force capabilities in a wide range of operations conducted on a smaller scale than war – aimed at preventing developments that may lead to escalation of tension in international or internal relations, potentially resulting in armed conflict. Examples of such operations include counterterrorism, combating international drug trafficking, ensuring freedom of passage and navigation, civilian population evacuation, or enforcing sanctions imposed by international organisations (see T. Szubrycht, “Analiza podobieństw operacji militarnych innych niż wojna oraz działań pozwalających zminimalizować zagrożenia asymetryczne,” *Zeszyty Naukowe Akademii Marynarki Wojennej*, vol. 47, no. 1(164) (2006), p. 135, 138).

³⁹ For example, such ROE were used by warships of the US Navy operating in the waters of the Persian Gulf during the Iran-Iraq War from 1980 to 1988 (see M. Marcinko, “Zasady podejmowania działań przy użyciu siły wobec statków powietrznych na przykładzie incydentu z USS ‘Vincennes’,” *Międzynarodowe Prawo Humanitarne*, vol. 3 (2012), pp. 133-137).

force in self-defence.⁴⁰ In situations of armed conflict, ROE serve to specify and clarify the norms of the Law of Armed Conflict (LOAC) that are typically used to limit the lawful use of force to achieve operational or political objectives. Importantly, ROE can never be more permissive regarding the use of force than the restrictions and prohibitions arising from the LOAC.⁴¹ Therefore, ROE also have a considerable impact on fulfilling the state's obligations under the LOAC and are often referenced when allegations of LOAC violations arise.⁴²

4. RULES OF ENGAGEMENT AND THE ASSUMED PARAMETERS OF THE SECURITY PROTOCOL

The following part of the article focuses on the particular aspects of ROE concerning their authors and addressees, scope, content, structure, networked dimension and legitimisation. It is essentially a comprehensive discussion of these aspects; however, it aims to align them with the parameters comprising the security protocol model to verify the assumption that ROE is a specific protocol of this kind, serving as a sort of 'code of conduct' for armed forces carrying out military operations.

4.1. (En)actant

The first parameter of the security protocol concerns the (en)actant, that is, the entity that creates the protocol (regardless of its origins or character). Since ROE currently constitute a constant and crucial element in the planning and execution of military operations conducted by states and international organisations, these entities are the enactants. This is fully understandable when considering the fact that in international law and international relations, the subjects of this law – primarily states and, somewhat with their consent, international organisations – have a monopoly on the use of military force, and it is their responsibility to maintain and restore international peace and security. Thus, in the process of drafting ROE for national and multinational operations, both states and international organisations must take into account political as well as legal considerations. On one hand, *a balance of interest must be found between the types and degrees of force that are politically acceptable, and those that are not*;⁴³ on the other hand, *the use of force and the accompanying procedures must not go against international law, and the authorized use of force must be premised on domestic law in participating nations*.⁴⁴ This means that legal advisors play a significant role in the process of creating ROE, despite the fact that ROE are not legal regulations.

⁴⁰ See *NATO ROE*, part 2, para. 9, p. 4, part 3, paras 10-12, pp. 5-6.

⁴¹ M. Szuniewicz, "Aspekty prawne NATO ROE – MC 362/1 (ze szczególnym uwzględnieniem komponentu morskiego)," *Międzynarodowe Prawo Humanitarne*, vol. 3 (2012), p. 71.

⁴² G.D. Solis, *The Law...*, p. 367.

⁴³ K.B. Sandvik, "Regulating War...", p. 122.

⁴⁴ *Ibid.*

It should also be noted that the ROE process is not static. As a military operation occurs under specific geopolitical conditions and its goal is strictly defined, the rules regarding the use of force must facilitate its achievement.⁴⁵ It is possible, therefore, that in the case of significant changes in the conditions under which the operation is conducted, the ROE will also require modification or supplementation.⁴⁶ In fact, commanders at every level of command may demand additional or modified ROE in response to newly arisen circumstances; thus, ROE should be consistently updated during the conduct of long-lasting operations. Furthermore, various units operating in the same theatre of operations may have different ROE depending on the character of the mission and assigned tasks. However, all units have ROE of some nature.⁴⁷ As a result, the nature of ROE may vary depending on the operation and the task being performed, as well as fluctuate during a single operation – from very ‘flexible’ rules, to highly restrictive ones.⁴⁸

4.2. Actor

Another parameter of the security protocol, closely related to the previous one, is the actor; that is, the entity that disseminates, reproduces or implements the protocol, and in the discussed case – the rules of engagement. This can be inferred from the very definition of ROE. Since they are guidelines directed at the armed forces, intended to inform commanders about limitations and permissions regarding the use of force, the ‘actors’ in a narrower sense will be the commanders directing the military operation and, in a broader sense, the members of the armed forces participating in that operation. In other words, ROE are *the commander’s ‘rules’ for employing armed force, arrived at with the help of military lawyer and implemented by those who execute the military mission*⁴⁹ or *the set of directives given to commanders in the field to guide them on the circumstances and manner in which force may be used.*⁵⁰ It follows from these descriptions that ROE are to be used by commanders to influence the use of force by military personnel under their command.⁵¹ Thus, ROE encompasses both the intricate strategies of a military campaign, facilitating the transmission of the political mandate desired by policymakers and the instructions directly provided to soldiers, often in the form of an ROE card or soldier’s card, serving as a training aid and memory tool.⁵² However, ROE primarily

⁴⁵ M. Żeligowski, “Zasady użycia...”, p. 188.

⁴⁶ See A.F. Varga, “Rules of Engagement vis-à-vis International Humanitarian Law,” *Academic and Applied Research in Military and Public Management Science*, vol. 11, no. 1 (2012), p. 4. Cf. G.P. Corn, “Developing Rules...”, p. 248; T. Szubrycht, “Wieloaspektowość wyzwań...”, p. 24.

⁴⁷ G.D. Solis, *The Law...*, p. 378.

⁴⁸ See M. Szuniewicz, “Aspekty prawne...”, p. 72.

⁴⁹ G.D. Solis, *The Law...*, p. 372.

⁵⁰ S.D. Sagan, “Rules of Engagement,” in A.L. George (ed.), *Avoiding War – Problems of Crisis Management*, Oxford 1991, p. 444.

⁵¹ C. Guldahl Cooper, *NATO Rules...*, p. 29.

⁵² K.B. Sandvik, “Regulating War...”, p. 118.

constitute documents issued at the strategic or operational level and directed towards commanders at these levels; therefore, they are usually not addressed to commanders or soldiers operating at the tactical level.

What are the aforementioned ROE cards (also known as soldier cards) then? In a general sense, they are a distillation of relevant ROE commonly presented in the form of pocket cards. These are concise summaries of the most pertinent and significant ROE, customised to meet the needs of the respective tactical forces.⁵³ However, as J.F.R. Boddens Hosang observes, although these cards are often referred to as 'ROE cards' (or simply ROE), they do not encompass ROE in the conventional sense. Instead, serving as simplified summaries of the actual ROE, they are intended to provide clear and comprehensible instructions to the personnel to whom they are issued regarding the use of force within their decision-making scope. For instance, these derivative cards do not encompass regulations on deploying (or employing) weapon systems subject to higher-level command decisions (such as air and artillery support). Rather, they elucidate and regulate the use of force in self-defence (or self-protection), the authority to detain civilians when applicable or authorisations for individual use of force to achieve mission objectives.⁵⁴

4.3. Message

The next parameter of the security protocol concerns the following message: what contents (e.g., code, precept, order) are embedded in the protocol? Discussing this parameter in relation to ROE is relatively complex. On one hand, one can specify the type of rules they are (what they specifically concern); on the other, the causative nature of these rules (i.e., whether they are orders or merely guidelines). Referring to the first aspect, it should be noted that ROE determine when, where, how and against whom force may be used during military operations and consist of both permissions for and restrictions on the use of force and other provocative actions. Obviously, ROE sets are typically drafted specifically for the operation they are designed for; hence, the specific contents of ROE will differ accordingly from one operation to another. However, it is possible to identify certain common and recurring elements of these sets.

In the case of combat operations, ROE are usually permissive in nature; they empower commanders with the authority to use all essential measures to defend their units and generally permit the use of any lawful weapon or tactic for mission accomplishment. This permissive framework grants commanders significant discretion in crafting ROE tailored to their specific mission. Furthermore, all ROE contain a clear statement of the right to self-defence (in fact, ROE never limit this right). Almost all sets of ROE include one or more provisions authorising the use of force to prevent the boarding or entry of vehicles, ships, etc. belonging to the military, as well as the seizure of personnel and assets. At times, ROE also outline escalation-of-force procedures. Additionally, most ROE

⁵³ C. Guldahl Cooper, *NATO Rules...*, p. 73.

⁵⁴ J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 44.

include other recurring elements such as identifying enemy hostile acts and intent, dealing with enemy forces declared hostile and positive identification requirement.⁵⁵

It should be underlined that ROE authorise the use of force but do not impose an obligation to use force under the circumstances outlined in the ROE; they grant permission rather than mandate the use of force. Consequently, ROE cannot be viewed as a *carte blanche* for the use of force.⁵⁶ Moreover, the scope of ROE cannot be limited solely to the use of weapons as they also apply to other means of direct coercion,⁵⁷ with the caveat that ROE only provide authorisation to resort to such measures, including the use of firearms or other armaments. It is the commander who ultimately decides whether to restrict or refrain from using weapons permitted under established ROE in a given situation.⁵⁸ However, while the commander may limit the application of measures outlined in ROE, they are not permitted to exceed the boundaries set by these rules.⁵⁹

Aside from providing guidance on the intricate matter of permissible force, the ROE may also entail comprehensive regulation of provocative measures that could escalate to the necessity of using force. For example, the positioning of troops and the permission (or restriction) to access certain land, sea or airspace serve as instances of ROE that are not directly tied to the use of force per se, yet are undeniably suggestive of 'actions' which may be construed as 'provocative'. ROE should also be expected to regulate acts such as the boarding of foreign vessels or aircraft; illumination of a person or object, for instance, in order to track, warn off or identify; use of Riot Control Agents (RCA), where necessary for purposes of mission execution (but only where such use is not a method of warfare); or use of non-lethal force to prevent the taking possession of or destruction of – for example – water facilities. Similarly, ROE for peacekeeping operations are likely to encompass directives governing various provocative behaviours beyond the application of force, such as authorisation for carrying weapons.⁶⁰

With regard to the second aspect of the discussed protocol parameter, when it comes to the form of ROE, two approaches – as noted by C. Guldahl Cooper – can be observed: according to the narrow approach, ROE are *certain directives or orders only – i.e., the ROE serial messages (numbered one-line messages) expressly authorising or prohibiting certain acts*;⁶¹ according to the wide approach, ROE are *any communications regulating the use of force*.⁶² In the military doctrines of particular states, ROE may be classified differently – for example, as executive orders, operational plans, operational

⁵⁵ G.D. Solis, *The Law...*, p. 379. See also J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 42.

⁵⁶ J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 33.

⁵⁷ T. Szubrycht, "Wieloaspektowość wyzwań...", p. 25. Cf. W. Gozdziwicz, "RoE w systemie źródeł prawa – wnioski," *Wiedza Obronna*, vol. 1 (2011), p. 78.

⁵⁸ M. Szuniewicz, "Aspekty prawne...", p. 72.

⁵⁹ See *Sanremo ROE Handbook*, part 5, para. 24, p. 7; *NATO ROE*, part 1, para. 4(a), p. 3.

⁶⁰ J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 41; C. Guldahl Cooper, *NATO Rules...*, p. 5, 12, 30-31.

⁶¹ C. Guldahl Cooper, *NATO Rules...*, p. 32.

⁶² *Ibid.*

orders, guidelines and military directives. Some ROE have been clearly specified as prohibitions or absolute requirements (in the form of direct and unambiguous orders); however, there are situations in which ROE leave a wide range of discretion in the hands of commanders or decision-makers, not only because the law allows or requires it, but also because it is indicated or necessary for operational reasons. ROE are, therefore, directives that are reinforced by legal factors, as well as strategic and operational capabilities, which are characteristic of a given theatre of operations. These rules should be perceived as means by which operational orders and the necessary conditions and limitations imposed by international law are integrated into one set of instructions. However, since ROE are strategic and operational command and control (C2) tools, they should be distinguished from specific tactical orders⁶³ – ROE are meant to *guide commanders' judgement about the appropriate uses of force, not to determine precisely when and how to respond to threats*.⁶⁴

It is worth emphasising that while ROE should generally refrain from simply reiterating legal norms, they can play a crucial role in reinforcing and implementing specific legal obligations relevant to the mission. For instance, they might include a prohibition on attacking protected sites like hospitals, churches, shrines, schools and museums, except in cases of self-defence or when these sites are no longer protected due to enemy misuse. Alternatively, ROE often grant authorisation for the use of force as permitted by law, such as designating hostile forces in armed conflict. They may also impose restrictions aimed at ensuring compliance with the LOAC, such as prohibiting the use of indirect fire in populated areas without direct observation.⁶⁵ Moreover, restrictions imposed by ROE may, for example, prohibit the use of a specific type of weapon, even if – under the LOAC – the use of that weapon is not strictly prohibited, as ROE are intended to prevent the escalation of situations involving the use of armed force. However, generally, ROE regarding the conduct of military operations align with the principles and norms of the LOAC and, in essence, they serve as a pivotal mechanism for ensuring that a commander's actions remain consistent with both national and international legal frameworks.⁶⁶

4.4. Degree of formalisation/legitimation

If we consider ROE in the context of a security protocol, then certainly in the parameter concerning formalisation and legitimisation (that is, how the protocol is structured and

⁶³ Ibid., p. 31.

⁶⁴ S.D. Sagan, "Rules of Engagement", p. 451. As one of the ISAF commanders said to his non-commissioned officers serving at the Combat Outpost Michigan in Afghanistan: *The R.O.E. are the can and cannot. (...) They are the rules of the game. The tactical directive covers should and should not* (W. Morgan, "Weighing Threats and Rules of Engagement," *New York Times*, 23 August 2010, at https://archive.nytimes.com/atwar.blogs.nytimes.com/2010/08/23/weighing-threats-and-rules-of-engagement-in-afghanistan/?_php=true&_type=blogs&_r=0, 17 January 2024).

⁶⁵ G.P. Corn, "Developing Rules...", pp. 221-222.

⁶⁶ See G.S. Corn, G.P. Corn, "The Law of Operational Targeting: Viewing the LOAC Through an Operational Lens," *Texas International Law Journal*, vol. 47, no. 2 (2012), pp. 356-357.

legitimised), ROE constitute an extremely highly formalised protocol legitimised by the political will of states (or international organisations), as well as by international and national law. Indeed, ROE are the result of three groups of interests – political, military and legal. In essence, ROE should take into account the political objectives of the military operation, consider the strategy and tactics of the armed forces employed and maintain compliance with relevant principles and norms of international and national law.

Thus, when conducting military operations, states may use ROE to restrict the scope of actions that would be permissible under the LOAC. These limitations may arise from reasons related to adopted policies (such as the implementation of population-centric strategies, reflected in ROE that rigorously restrict the ability to attack military targets in urban areas) or for operational reasons (such as excluding certain infrastructure from the list of potential targets because this infrastructure could be used for military purposes).⁶⁷ As long as a state conducts military operations within the bounds of rights and obligations specified in the LOAC, it may, at its discretion, decide to impose certain degrees of self-restraint within those actions. However, under no circumstances can such a state authorise its armed forces to conduct actions that are inconsistent with the international obligations arising from the principles and norms of the LOAC.⁶⁸

It is important to note that ROE should never be equated with the LOAC, nor should they be treated as a sort of compilation of principles and norms of this law. Generally speaking, while international law constitutes a significant component of ROE, it is not their sole element – strategic, operational and political factors also contribute. Moreover, in the process of formulating ROE, consideration is given not only to international law (including the LOAC), but also to the domestic law of the state establishing the ROE and the domestic law of the state where military operations will or are being conducted.⁶⁹ This is particularly important in the case of multinational military operations – the establishment of unified ROE being one of the essential elements of effective coalition action. However, individual coalition member states may have different approaches to the same issue, and their international legal obligations may vary accordingly.⁷⁰ Therefore, ROE issued for multinational operations are subject to adap-

⁶⁷ R. McLaughlin, "Protecting Civilians...", p. 98.

⁶⁸ Cf. G.P. Corn, "Developing Rules...", p. 222.

⁶⁹ Cf. D.R. Bugajski, "Morskie, stałe zasady podejmowania działań przy użyciu siły," *Międzynarodowe Prawo Humanitarne*, vol. 3 (2012), p. 40. For example, where military forces are tasked with law enforcement duties, whether during or outside of an armed conflict, the authority granted by ROE to use force will be grounded in international and/or domestic human rights principles rather than rules based on the conduct of hostilities (G.S. Corn G.S., K. Watkin, J. Williamson, *The Law in War: A Concise Overview*, London 2023, p. 251. It should be noted that ROE should not (or at least not necessarily) be treated as a reflection of the national interpretation constituting their legal basis (see R. McLaughlin, "Protecting Civilians...", p. 98).

⁷⁰ See T. Zubrych, "Wieloaspektowość wyzwań...", p. 35. It may also happen that coalition states interpret jointly developed ROE differently, not only due to legal obligations but also for political reasons (see A. Jachec-Neale, *The Concept of Military Objectives in International Law and Targeting Practice*, London 2015, p. 160).

tation processes to the legal conditions of national contingents, with ROE developed for coalition operations not depriving coalition states of the right to develop their own ROE.⁷¹ Furthermore, in multinational operations, states may raise objections to formulated ROE (so-called 'national caveats'),⁷² with the aim of exempting their units from the necessity to use force in a manner contrary to domestic law. Additionally, each time ROE are developed, apart from law, politics and operational art, it is also necessary to take into account the nature and location of the operation, the type of armed forces participating in the operation (air forces, navy, ground forces, special forces or other uniformed formations) and other local conditions.⁷³

With regard to multinational operations, the operational mandate serves as the legal foundation not only for deploying and engaging forces, but also as the legal underpinning for ROE. This mandate should outline the fundamental parameters of the operation, including its objectives, methods for achieving them, as well as the size, composition and command & control structures of the armed forces assigned to execute the operation, among other factors. ROE, in relation to the mandate, act as one of its implementing tools by drawing their authority directly from the mandate and, thus, must align with its terms, objectives and purposes.⁷⁴

4.5. Frame/platform

In the case of the parameter defined as a frame or platform, one must address the question of where a given protocol applies, considering not only its spatial dimension, but also the context of its application, its dominant operating level (e.g., global, regional, national) and its dominant scope (military, political, social, economic, etc.). This is quite a problematic parameter from the perspective of ROE, since military operations or missions are never identical. The circumstances, objectives, foundations and conditions will inevitably differ and develop throughout any operation. Therefore, ROE must also evolve to remain operationally pertinent and efficient.⁷⁵ ROE are dynamic instruments that adjust and adapt in response to shifts in policies and the considerations underlying them. Modifications to ROE may be necessary to align with changes in policy objectives, developments in military operations within a specific mission or alterations in the legal status of the forces involved, necessitating careful consideration

⁷¹ However, they cannot authorize more than what is stipulated by the ROE for coalition forces (see A. Jachec-Neale, *The Concept of Military...*, p. 160). See also *NATO ROE*, part 1, para. 4(c), p. 3.

⁷² Caveats are *national restrictions, meaning that the ROE in question either cannot be applied at all by the national forces of the Member State imposing the caveat, or only under specified restrictions* (J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 29, fn. 36). National caveats may concern, for example, the situations and conditions of weapon use, methods of conducting searches, or refusal to employ certain means of combat (M. Szuniewicz, "Aspekty prawne...", p. 68).

⁷³ T. Szubrycht, "Wieloaspektowość wyzwań...", p. 25.

⁷⁴ M. Faix, "Rules of Engagement...", pp. 136-137.

⁷⁵ G.P. Corn, "Developing Rules...", p. 241.

of potential requirements for ROE adjustments.⁷⁶ However, certain common factors can be identified, including the territorial and temporal scope of ROE application, as well as the key elements determining their character.

In geographical terms, ROE are developed with military operations conducted within a limited territory (e.g., within one state, in a specific region). The ROE regarding geographical areas are tied to the mission's mandate and objectives, serving to authorise entry into the operational area while also upholding the national sovereignty of other states in the area.⁷⁷ For instance, geographical ROE, which govern the positioning of units or forces in the operational theatre, typically stipulate that units are not allowed to cross the border into neighbouring states without obtaining prior permission from those neighbouring states. This directive, naturally, reflects a fundamental principle of public international law that applies equally outside the context of military operations but is frequently reiterated in ROE to emphasise this rule.⁷⁸

The context in which ROE are to be applied also holds significant importance for their character. During a situation below the threshold of armed conflict (e.g., in the context of a peacekeeping operation), the ROE typically authorise the use of force solely in self-defence. In situations of armed conflict, ROE generally allow the use of force against lawful military targets based on their status as such.⁷⁹ However, prevailing practices suggest that the ROE for any operation are likely to consist of a combination of permissions and restrictions. For example, entering a geographic area near a neighbouring state could lead to inadvertent escalation and, thus, may be forbidden. Nonetheless, it might still be imperative to incorporate an exemption to permit such entry for search and rescue purposes.⁸⁰

In terms of time, ROE pertain to the execution of a specific operation (e.g., combat tasks being carried out in the context of an ongoing armed conflict) and cease to be applicable after its conclusion. Similarly, if the decision is made to discontinue the use of an existing ROE, possibly due to a change in the nature of operations, the ROE could be rescinded. As explained by C. Guldahl-Cooper, an instance of such ROE might involve limitations on conducting military exercises near a neighbouring hostile state. In the event of an armed conflict erupting with that state, such ROE would probably become obsolete. However, while a local commander may impose restrictions on the application of certain ROE for forces under their command, the cancellation of the ROE for all forces must be executed at the strategic level.⁸¹

It was mentioned above that ROE are the result of political, military and legal interests. None of these elements, however, should outweigh the others. While it is true

⁷⁶ J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 14.

⁷⁷ *Ibid.*, p. 41.

⁷⁸ *Ibid.*, pp. 35-36.

⁷⁹ Cf. K.B. Sandvik, "Regulating War...", p. 123.

⁸⁰ C. Guldahl Cooper, *NATO Rules...*, p. 75.

⁸¹ *Ibid.*, p. 77.

that the military nature of ROE is apparent and naturally stems from their function within the framework of military operations, the ROE must adhere to relevant laws and reflect the political scope of the operation at hand. In other words, in drafting ROE, it is crucial to strike a proper balance. If ROE become 'overloaded' with regulations focused solely on political and legal aspects, it may turn out that achieving the objectives of the operation will not be feasible from a military standpoint or may entail difficult-to-accept own losses. Moreover, even the most politically acceptable and legally sound ROE are ultimately ineffective if they are not operationally relevant, comprehensible to the personnel to whom they are disseminated and conducive to the execution of the operation.⁸² Therefore, the lower limit of ROE should be military necessity considerations aimed at enabling the achievement of operational objectives, while the upper limit should be the applicable legal provisions. If the legal limit is below the military necessity limit, the operation should not be conducted because its objectives cannot be achieved in a manner consistent with the law.⁸³

4.6. (Infra)structure/networks

The last of the discussed security protocol parameters serves to determine how the protocol establishes a networked field. In the case of ROE, this is arguably the most problematic parameter, as it is difficult to determine whether ROE form a network and how it should be understood. It seems that the element best corresponding to this criterion is the structured and hierarchical nature of ROE, based on the chain of command. ROE are adopted at the strategic and operational levels of command, while simplified forms of ROE, in the form of soldier's cards, operate at the tactical level.

Whether in the form of standing ROE or mission-specific ROE, they are typically established initially at the strategic level and then cascaded down the chain of command. They are integrated into operational planning and training at every level as part of the standard operational order process. Strategic-level ROE define the parameters within which the entire armed force operates, regardless of whether in times of peace or war. Such comprehensive guidance also serves to restrict the ROE issued at lower levels of command, extending down to the tactical commander and individual soldiers. While operational and tactical commanders may generally have the authority to issue additional ROE, they are seldom permitted to enact measures that are more permissive than those prescribed at higher levels.⁸⁴

Thus, at the strategic level, ROE serve as political limitations regarding the use of lawful force, whereas at the operational level, they function as a mechanism for regulating the use of force, specifically as a command and control (C2) tool. Undoubtedly, ROE have consistently stood out as one of the primary means of controlling the use of force and other provocative actions, whether in peacekeeping missions or operations

⁸² See J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 32.

⁸³ M. Żeligowski, "Zasady użycia...", pp. 188-189.

⁸⁴ G.P. Corn, "Developing Rules...", pp. 213, 225.

entailing engagement in armed conflicts.⁸⁵ Operationally, ROE delineate the commander's scope of action in deploying their forces to accomplish the mission – as defined by the political interpretation of the operation's mandate. Furthermore, ROE empower operational-level commanders to oversee subordinate forces and their approach to mission accomplishment, prevent undesired escalation and ensure force protection.⁸⁶

Rules of Engagement, developed at higher-level commands, are ultimately condensed into a simplified and situationally contextual ROE card that is applied by members of the armed forces participating in a given military operation, to the extent necessary for carrying out their assigned tasks.⁸⁷ As an example, according to the ROE card prepared for the Polish Military Contingent in Kosovo as part of the NATO KFOR mission, while fulfilling their mission, a soldier should use only the minimum necessary force. If enemy forces wish to surrender, they should not be fired upon but disarmed and handed over to the commander. Everyone, both civilians and captured enemy combatants, should be treated with respect for humanitarian principles, including providing assistance to the wounded, regardless of whether they are friends or foes. In the event of weapon use, aiming when firing, using only as much ammunition as necessary, employing weapons in a manner that avoids unnecessary destruction of property and ceasing fire as soon as the situation allows are all imperative.⁸⁸

5. CONCLUSIONS

Within the aforementioned research project, protocolarisation is conceived as a process of enacting, reproducing and communicating simplified messages that strengthen control over actors in decentralised systems. Moreover, there is a direct correlation between security and the form of its protocolarisation; protocol refers to security as a process of managing uncertainty under conditions of limited cognitive abilities and imperfect knowledge of reality. It establishes common basic rules and normative frameworks that aim to cope effectively with risks and dangers. In the author's opinion, an example of such an understood security protocol is the Rules of Engagement, which aim to provide commanders at the operational and tactical levels with greater control over the implementation of military operations by the units under their command. Being a sort of conglomerate of prohibitions and permissions,⁸⁹ ROE should balance aspects of politi-

⁸⁵ See C. Guldahl Cooper, *NATO Rules...*, p. 25, 59. It is worth mentioning that ROE closely interact with additional directives and orders that regulate specific types of the use of force, such as targeting directives and tactical directives (see J.F.R. Boddens Hosang, *Rules of Engagement...*, p. 21, 24).

⁸⁶ C. Guldahl Cooper, *NATO Rules...*, p. 61.

⁸⁷ See A.J. Carswell, "Converting Treaties into Tactics on Military Operations," *International Review of the Red Cross*, vol. 96, no. 895/896 (2014), p. 923.

⁸⁸ Based on the ROE card (soldier's card) of the PKW KFOR (on file with author).

⁸⁹ See *NATO ROE*, part 5, para. 15, p. 7 (*The ROE in this document are written as a series of prohibitions and permissions applicable to activities in a wide range of military operations*).

cal nature that are aimed at achieving the set goal, legal considerations responsible for the compliance of developed procedures with the LOAC norms and the requirements of military necessity aiming at minimising own losses.

However, to demonstrate how ROE fit into the envisaged model of security protocol, individual aspects and elements of ROE were analysed from the perspective of the parameters of this protocol. The results of this analysis seem to confirm that ROE can be treated as a *sui generis* security protocol, essentially serving as a code of conduct during military operations. However, not all elements of ROE could be easily fitted into the framework of the model protocol and do not fully correspond to the adopted theoretical assumptions. Firstly, the scope of enactants here is limited to states and international organisations, primarily determined by the monopolisation of the use of force by these subjects and legal prohibitions regarding the use of force. Furthermore, ROE are highly formalised directives operating within the armed forces, requiring a hierarchical system and chain of command; it is difficult to expect subjects other than those mentioned above to meet these conditions. Similarly, in terms of actors, these are armed forces, specifically commanders directing military operations and leading military units; ROE serve as tools for command and control. Moreover, through ROE, a commander can control not only their own forces – *by controlling the use of force, ROE can influence the actions taken by other parties, including opposing forces*.⁹⁰

Indeed, ROE enable commanders to control the use of force and, hence, mission development and prioritisation.⁹¹ Therefore, the message of ROE is clear – they determine when, where, how and against whom force may be used during military operations and consist of both permissions for and restrictions on the use of force and other provocative actions. In this respect, they facilitate the synchronisation of the political-diplomatic and military elements of a strategy, enabling commanders to better understand, anticipate and customise force actions.⁹² The mentioned control also encompasses compliance with the LOAC, as ROE allow for the harmonious integration of the needs arising from military activities and the constraints resulting from the application of the LOAC.⁹³ However, the legal status of ROE is not ultimately determined – for some, they are legally binding orders, whereas, for others, they are guidelines or directives.⁹⁴ Obviously, ROE should not be viewed as solely legal documents; they neither reiterate nor supplant the law relevant to the operation. Additionally, adherence of the ROE to applicable law does not automatically ensure the legality of actions carried out in accordance with the ROE.⁹⁵ At least, though ROE are not

⁹⁰ H. Boddens Hosang, "Rules of Engagement and Targeting," in P.A.L. Ducheine, M.N. Schmitt, F. Osinga (eds), *Targeting: The Challenges of Modern Warfare*, The Hague 2016, p. 164.

⁹¹ C. Guldahl Cooper, *NATO Rules...*, p. 88.

⁹² M. Faix, "Rules of Engagement...", p. 138.

⁹³ A. Makowski, "Zasady podejmowania działań przy użyciu siły w operacji morskiej w świetle podręcznika ROE, San Remo 2009," *Międzynarodowe Prawo Humanitarne*, vol. 3 (2012), p. 21.

⁹⁴ See T. Szubrycht, "Wieloaspektowość wyzwań...", p. 27.

⁹⁵ See J.F.R. Boddens Hosang, *Rules of Engagement...*, pp. 36-37.

a separate source of legal obligations, they safeguard compliance with international and national law.⁹⁶

With regard to the frame (platform) parameter, ROE function within and are integral to the military operational environment in which they are issued and implemented. ROE are, therefore, designed to be applicable to a specific military operation⁹⁷ – if it is carried out in a situation of armed conflict, ROE also take into account the specifics of this conflict, including its international or non-international character. Furthermore, in modern military operations, ROE are more restrictive than the LOAC due to the need to consider political aspects related to the use of military force. Therefore, properly developed and tailored ROE can contribute to the use of force in a manner appropriate to the given situation and in line with the objectives of the military operation conducted within the framework of armed conflict. As for the dominant factor in ROE, although the legal aspect of ROE is a fundamental and crucial component, ensuring the legality of the use of force in the operation at hand, it must at the same time be viewed in the proper – balanced – context, considering the significance and impact of the other two elements of ROE.⁹⁸

The most challenging parameter to reconcile turned out to be the networked nature of the protocol because, if understood as a decentralising factor, ROE essentially represent its opposite. Obviously, the network can be regarded as a certain (infra)structure and, in that case, the three levels of ROE – strategic, operational and tactical, connected by the chain of command – could be considered a form of network. However, fitting this element requires further research, and considering that the security protocol model is still in the developmental phase, it cannot be excluded that it will be enriched with additional, new parameters that require similar in-depth analysis.

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⁹⁶ Cf. M. Faix, “Rules of Engagement...”, p. 138.

⁹⁷ Cf. D.R. Bugajski, “Morskie, stałe zasady...”, p. 40.

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