Chapter 6
Rules of Engagement

Ben Klappe

Whether or not an obligation to protect civilians is explicit in the mandate of such a force, the United Nations and other actors must be prepared to respond to the expectation of protection created by their very presence.¹

1. Introduction

The phrase above originates from a report analysing United Nations (UN) actions surrounding the 1994 genocide in Rwanda and clearly illustrates the difficulties civilian and military leaders have had in the past to fathom mandates and to comprehend Rules of Engagement (RoE). If ‘reluctance to use force’ was the name of the game during peace operations in the early 1990’s, today’s focus is on the side-effects of the apparent non-reluctance to use force - civilian casualties - jeopardising peace operations as a result of losing hearts and minds.

After-action reports of peace operations have often hinted at obfuscated mandates or unclear RoE. But failures involving the use of lethal force, or the lack thereof, might also be the result of a lack of willingness to deploy sufficient troops. Failures may also stem from the inclination of political leaders to interpret the mandate too restrictively, and occasionally too widely, and the oftentimes unfounded dormant fear of commanders of criminal prosecution in case a decision has to be made when a situation of hostile intent occurs. The latter is connected to generic difficulties when troops are increasingly engaged in stability operations or peace enforcement: opponents hiding amongst the civilian population with great risks of civilian casualties when using deadly force. This chapter will assess the term ‘Rules of Engagement’ (RoE) and analyse why decisions to use force have caused difficulties in the past and why RoE are still perceived as a burden, causing considerable inconvenience for commanders and soldiers during military operations nowadays. Subsequently the chapter will explore what possible remedies may entail and examine why only a very few cases involving the use of (excessive) force may lead to prosecution.

2. Rules of Engagement – Authority, Prohibitions and Limitations

Rules of Engagement are directives to operational commanders which delineate the parameters within which force may be used. Rules are based on a mandate - be it international (UN Security Council, regional organisation) or national (Government) - authorising a multinational force or national force to deploy and execute tasks in order to achieve military objectives. Such a mandate will be translated at the highest military level into an initial concept of military operations. It will leave necessary space for planners at subordinate headquarters, adjusting plans to situations as they occur. Despite the necessary room for interpretation, clarity is needed when it comes to the authority to use force. Not only will this clarity protect individuals against excessive use of force, it also protects peacekeepers from prosecution when force is used within the parameters of the RoE. RoE in military parlance may appear in various forms, linked to various levels: strategic, operational and tactical, the latter usually supplemented with a so-called pocket card or soldiers’ card with, in clear soldiers’ language, a repetition of the basic rules on how and when to use force.

A phrase that is nowadays almost a standard in Security Council resolutions is the authorisation ‘to use force, up to and including deadly force, to protect civilians under imminent threat of physical violence…’. It should be clearly understood at all levels that this is at the heart of the raison d'être of peacekeeping: if peacekeepers are unable, unwilling or not authorised, then what is their role in the first place? Attention should be paid to the precise wording. It raises questions whether there is a difference in the execution of the mission when the wording reads: ‘to protect’, ‘to ensure protection’ or ‘to contribute to the protection’. The answer should be in the mission implementation plan, the operational plans and orders for military and police components.

Although RoE traditionally are developed for military personnel, police forces are also using RoE or similar directives, such as Directives for the Use of Firearms (DUF). Specific RoE are often developed for maritime operations and interception and engagement of aircraft. As private contractors are increasingly participating in peace operations, rules on the use of force will exist for such personnel. In peacekeeping operations, small groups of soldiers rather than large formations of military units are deployed to execute tasks. Often junior leaders will have to take decisions on the use of force. No commander or superior when monitoring the situation from headquarters or a command post with live-camera images can substitute for the common sense of the leader on the spot. Only they are able to make a final analysis

2 UNAMID, Darfur, UNSC Res. 1769 (31 July 2007) and MONUC, Democratic Republic of Congo, UNSC Res. 1565 (1 October 2004).
3 MONUC, Democratic Republic of Congo, UNSC Res. 1565 (1 October 2004): to ensure the protection of civilians, including humanitarian personnel, under imminent threat of physical violence.
4 UNAMID, Darfur, UNSC Res. 1769 (31 July 2007): to contribute to the protection of civilian populations under imminent threat of physical violence and prevent attacks against civilians, within its capability and areas of deployment, without prejudice to the responsibility of the Government of the Sudan.