Training in the Principles of the Use of Force to Eliminate the Nangar Khel Syndrome

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The author analyses the phenomenon of fear of using force in combat situations, described by Polish soldiers as Nangar Khel syndrome. It proves the thesis that the fear of possible legal consequences of unjustified use of force results from insufficient level of knowledge and insufficient skills of soldiers to apply the rules of using force in practice. As a method of eliminating this syndrome, he postulates conducting training in the principles of using force.

KEY WORDS
principles of the use of force, use of weapons, military operation, Nangar Khel syndrome, right of self-defence

The soldiers of the Polish Military Contingent in Afghanistan fired on non-target buildings, resulting in the death of six civilians and severe injury to three people. This incident occurred on 16 August 2007 in Nangar Khel, a village in the Islamic Republic of Afghanistan. Both the event itself and its legal consequences - spectacular arrests of soldiers, their many years of trial, accusations of committing war crimes and the final conviction of some soldiers for committing a crime of insubordination consisting in the failure to observe the rules of the use of force - had and still have an impact on the social awareness of soldiers of the Polish Armed Forces.

After the initiation of criminal proceedings for committing war crimes in Nangar Khel, General Waldemar Skrzypczak, the then commander of the land forces, described the

1 Records of proceedings 21/12 (50/08) concerning the perpetration by soldiers of the 1st Assault Platoon of the Polish Military Contingent ‘C’ Combat Team on 16 August 2007 in Nangar Khel located in the Islamic Republic of Afghanistan (records kept in the Military District Court in Warsaw).
mood in the army as follows: [...] it is Nangar Khel syndrome. - People who were to go on further missions are now wondering: what for? So that I would be afraid to pull out my gun and shoot?².

Many years have passed since the incident in Nangar Khel, during which time, among other things, statutory regulations have been introduced concerning the rules of using weapons in military operations outside the country³. It would seem that Nangar Khel Syndrome should already be the subject of historical analysis only. Unfortunately, the results of scientific research indicate that the memory of this event determines the pattern of behaviour in combat situations. In 2017 Anna Zygo conducted 43 in-depth interviews with veterans of military operations outside Poland. She stated that there is a well-established pattern of reaction in situations of contact with the enemy, called Nangar Khel syndrome⁴. According to the private soldiers, this syndrome consists in the fact that commanders do not take action in situations when subunits are under fire, because they are afraid to consider decisive reactions as a violation of the rules of using weapons and to suffer legal consequences after returning to the country⁵.

If such opinions are expressed, action should be taken to restore soldiers’ confidence in their superiors on such a fundamental issue as deciding to use force in a combat situation. The search for countermeasures should begin by clarifying the term ‘Nangar Khel Syndrome’ and identifying the sources of its occurrence.

The experience of the armed forces of the allied countries described in the literature confirms that soldiers feel fear of the legal consequences of the use of force during military operations, and what is more, it indicates that the feeling of fear is not only accompanying commanders. An example of an incident in 1993: an American soldier, a participant of the UN mission in Somalia, was accused of killing (with a warning shot) a Somali citizen during an arms search operation when he tried to escape. One of the American commanders of this operation said: [...] because of this trial and for fear of the legal consequences, the soldiers were reluctant to use weapons in certain situations, even when they were shot at⁶, it took weeks to work it out.

² Art. 7b and 7c of the Act of 17 December 1998 on the rules of use or stay of the Armed Forces of the Republic of Poland abroad, i.e. 2014, item 1510.
⁴ Anna Zygo puts forward the theses that such a commander’s attitude, sometimes resulting from his decision and sometimes from the TOC’s disagreement, firstly, teaches the enemy to attack Polish troops with impunity, secondly, poses a threat to the soldiers, and thirdly, lowers their morale and trust in the commander. Wider: Nangar Khel syndrome paralysing - interview with Anna Zygo, ‘Sieci’ 2019 No. 4, pp. 84-86, https://www.wsieciprawdy.pl/numer-4-pmagazine-2327.html [accessed 20.03.2019].
Cases of fear of using a weapon were also reported in the British Army after the trial and conviction of a soldier who in 1990 in Belfast fired on a vehicle trying to pass a checkpoint and as a result caused the death of a passenger of that vehicle.\(^7\)

Criminal proceedings in a case similar to the ones presented, i.e. for causing the death of an Iraqi citizen by a warning shot fired by a PKW Iraqi soldier, ended in discontinuance of the proceedings. If the decision of the law enforcement agencies was different, perhaps the phenomenon of fear of using weapons would be called the Iraqi syndrome in the country today, and not the Nangar Khel syndrome.

To sum up, two statements seem justified: the growing fear of the legal consequences of using weapons cannot be identified solely with the Nangar Khel incident and this fear is felt by soldiers of all corpses and personal groups. Therefore, the concept of Nangar Khel syndrome should be understood as the phenomenon of avoiding the decision to use force under conditions justifying its use, resulting from fear of possible legal consequences. This fear may be experienced both by soldiers on the battlefield and their superiors, who, on the basis of information gathered in tactical command centers, give up the use of a technically feasible means or method of conducting armed combat.

The use of a weapon against a human being is difficult for many reasons, but in a military operation, a decision not to use force due to uncertainty about the legality of its use can have dangerous consequences for the soldier himself and his comrades and subordinates. The analysis does not include a study of the sociological and psychological sources of fear of using weapons, but focuses on presenting educational deficits as a probable source of anxiety.

The reasons for the fear of the legal consequences of the use of weapons should be seen in the insufficient knowledge of the legal conditions of military operations and the lack of practical training of soldiers, non-commissioned officers and officers in the competence to use force. The author’s professional experience gained during the ISAF and RS operations in Afghanistan shows that there is much that can and should be improved in the process of preparing soldiers for the decision to use force.

The assumption that increasing the effectiveness of force training will reduce the occurrence of Nangar Khel syndrome is based on two premises. First, soldiers aware of the limitations on the use of force will understand the decisions made by their commanders to a greater extent. Secondly, the ability to identify situations justifying the use of force will reduce the stress of soldiers resulting from uncertainty as to the legality of its use.

The publication is divided into two parts. The first one explains the essence of the principles of the use of force, identifies the factors determining the offense or passivity of these principles and indicates why the principles of the use of force should not be equated with International Humanitarian Law on Armed Conflict (IHLHR). Understanding the basic conditions for the use of force should contribute to making soldiers less vulnerable to Nangar Khel syndrome.

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The second part of the article analyses the content and limits of the right of a soldier and a subdivision to self-defense and defines the sources of this right in national and international law. In the author’s opinion, developing habits of using weapons in self-defense should be one of the basic goals of the process of preparing a soldier to participate in a military operation. Acquiring the ability to recognize situations that justify the use of weapons in self-defense will contribute to increasing the level of physical security of soldiers and subdivisions and will create the basis for assimilating other principles of the use of force.

Rules of Engagement in International Operations

The very requirement to comply with the rules on the use of force is sometimes considered to be the cause of Nangar Khel syndrome. In Anna Zygo’s research, soldiers indicate that the lack of reaction from commanders results from the fear of violating the Rules of Engagement (RoE) and their inadequacy to combat conditions. Maybe the reason for the occurrence of Nangar Khel Syndrome is the very existence of RoE, or is it signaled by the test subjects that the Rules of Engagement are not adapted to the combat conditions? However, the results of the author’s research on the principles of the use of force (RoE) in military operations contradict such opinions.

The term ‘Rules of Engagement’ began to be used in the 1950s to refer to directives governing the use of force in military operations. In the NATO dictionary, the term was defined as directives issued by the competent military authorities, defining the conditions and limitations for the initiation and/or continuation of military operations against encountered forces. In contrast, according to the doctrine of the use of force in NATO operations, the term ‘Rules of Engagement’ means a directive issued by the North Atlantic Council/Defense Planning Committee to commanders and subordinate troops, specifying the circumstances, conditions, intensity and type of acceptable force they may use and the admissibility of the deployment and maneuvering of NATO forces, which may be interpreted as a threat to the use of force in the period between peacetime and conflict.

Rules on the use of force for an international operation shall be prepared both by the organization conducting the specific military operation and by States sending their contingents to participate in the operation. Therefore, the soldiers of the Polish Armed Forces are bound by the rules of use of force issued in the form of a legal regulation by the Minister of National Defense and a directive issued by the international body.

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9 AAP-06, Edition 2016 NATO Glossary of terms and definitions, s. 120.
10 MC 362/1, NATO Rules of Engagement of 2003 (a new doctrine of the use of force - MC 362/2 - is currently under development in NATO.)
11 Pursuant to Article 7c of the Act of 17 December 1998 on the principles of use or stay of the Armed Forces of the Republic of Poland outside the borders of the country, the Minister of National Defence shall determine, by way of an order not subject to publication, the principles of use of force for each foreign operation with the participation of the Polish Armed Forces.
supervising a specific operation (i.e. the UN Security Council in missions conducted by the United Nations, the Council of the European Union in operations conducted by the EU or the North Atlantic Council in operations conducted by NATO).

In order to translate the definition into practice, examples of violations of the principles of the use of force during combat operations are presented. An analysis of the effects of the discussed incidents will help to understand the need to define permits and restrictions on the use of force by troops conducting a military operation.

During the Korean War, the American fighter pilot F-86 Capt. Dolph Overton, after making 40 combat flights without contact with the enemy, decided to change the way he acted. He conducted a time-consuming analysis of radar data, which allowed him to understand the enemy’s patrol procedures and locate the landing areas of the fighter MiGs on Chinese territory. During the next four combat flights, which he carried out from 21 to 24 January 1953, he shot down five aircraft. This meant that he deserved the title of aviation ace and in less time than the pilots who achieved this honorable status during the war. In the squadron in which he served, flights were suspended for 10 days, and instead of gaining recognition, he was deprived of his honors and sent back to the country. There he ended his military service. This is how the American military authorities reacted to the pilot’s violation of the ban on violating Chinese airspace.

This was not the only case of a violation of the ban on operating in Chinese airspace. One of the official reasons for General Douglas McArthur’s dismissal in April 1951 from the post of commander of the UN intervention force in Korea was the violation of the ban on the violation of Chinese airspace by forces under his command.

The analysis of the cited examples should start with the conclusion that the restrictions set out in the RoE may have political, legal and military reasons. The pilots and the Operations Commander violated the ban on violations of Chinese airspace, thereby ignoring the political determinants of the then US administration, which sought to prevent China from openly engaging in armed conflict in Korea and retaliatory attacks on targets in Japan. The US pilots also violated the UN mandate (legal source of RoE restrictions) setting the territorial framework for the United Nations military operation. Soldiers who did not comply with the ban on violations of Chinese airspace disproportionately...
jeopardized the achievement of the objectives of the operation in Korea rather than the military gain from the effective destruction of military targets.

The limitations on the use of force indicated in the RoE may be dictated not only by political and legal considerations, but also by the military conditions of the operation. Operational restrictions aim, among other things, at ensuring the security of own and allied forces against the effects of the use of their own means of destruction, the so-called friendly fire or, more correctly, fratricide. To illustrate the scale of the problem and thus justify the need to limit the range of force allowed for operational reasons, it is worth quoting statistics and examples from the Gulf Wars. In 1991, 24% of the casualties among American soldiers participating in Operation Desert Storm were killed in fratricidal attacks. Spectacular examples of violations of RoE rules were fratricidal attacks carried out by the U.S. Air Force in the airspace of Iraq: On April 14, 1994, in a no-fly zone, a pair of F-15 duty F-15 planes mistakenly shot down two US Army helicopters - crew members and 26 passengers, and on March 28, 2003, two direct air support A-10 Thunderbolt II assault aircraft mistakenly attacked a convoy of British vehicles, resulting in five British soldiers being injured and one killed.

An operational constraint on the use of force is also the requirement to limit civilian casualties to a level below that permitted by law. The achievement of the objectives of many military operations, in particular those where the opponent uses the protection of civilians, requires the limitation of the use of means and methods of conducting an armed struggle that may cause unintended harm to civilians.

When looking for RoE violations that have resulted in civilian casualties, we do not need to draw on the experience of the US Army. Unfortunately, we will also find them in the Polish army. After analyzing the evidence of the incident in the Nangar Khel village, the court ruled that four soldiers of the Polish Military Contingent in Afghanistan are guilty of committing a crime of improper execution of an order, which consisted in not obeying the rules of the use of force, resulting in the death of six civilians and severe damage to the health of three people.

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19 W terminologii NATO określenie friendly fire jest zastępowane pojęciem fratricide. W NATO Glossary of Identification AAP-28(B) termin fratricide zdefiniowano jako The employment of friendly weapons or munitions with intent to engage enemy resulting in the unforeseen and unintentional injury or death of friendly personnel or destruction of property.


The legal protection of the life and health of persons not involved in armed conflicts does not mean that causing the death of civilians in the course of armed operations will always be a war crime or even unlawful. IHK foresees situations where civilians lose their protection against an attack (e.g. when they participate directly in armed activities) and situations where they may be considered as unintentional and accidental victims of lawful attacks. These general legal principles allowing (in line with the principles of proportionality and military necessity) for collateral damage resulting from the destruction of a military target may be limited by RoE.

Only rules for the protection of civilians that are stricter than those applicable on the basis of legal standards can be introduced within the scope of RoE, RoE cannot legalize the use of force in a manner prohibited by international law. In the above mentioned case of conviction of PKW Afghanistan soldiers, there was a simultaneous violation of the prohibitions of international law and RoE. The court ruling in this case, having found no basis for attributing to the defendants the intentional attack on farm buildings in Nangar Khel and thus committing the murder of civilians, decided to change the legal classification of the act from a war crime to the crime of improper execution of an order, consisting of failure to observe the rules of the use of force.24

Rules on the use of force should not be equated with legal norms that restrict the parties to armed conflicts from using certain methods and means of fighting. An example of a means of combat prohibited by the IHKZ is chemical weapons, and a prohibited method of combat, for example, to attack objects that are not military objectives. RoE is not part of the system of international law, although of course the powers granted in RoE must comply with international law.

Unlike IHKZ, which binds all parties to the conflict by a majority of its provisions, the powers to use force and restrictions on its use set out in the RoE are only binding on the soldiers in the armed forces for whom the RoE has been issued. In a nutshell, it can be stated that the catalogue of methods and means of conducting an armed struggle allowed by international law in the RoE indicates those which can be used at strategic, operational and tactical levels when conducting a given military operation.

To sum up, each military operation requires the definition of rules on the use of force appropriate to achieve the objectives by the available military means. During the operation, the terms of reference and restrictions indicated in the RoE may be adapted to changing political, military or legal circumstances.

The changes in the RoE result, inter alia, from the decision of political leaders to escalate or de-escalate the conflict. The military conditions will change the objectives of the operation and the legal conditions will change the mandate issued by the UN Security Council on the use of force during the operation. The powers of use of force defined in the RoE may be broader (offensive) or narrower (defensive) depending on the political, military and legal conditions of the operation at any given time.

The achievement of the objectives of a military operation requires adherence to the RoE, a kind of tool enabling military superiors and political leaders to regulate the use of means

24 Justifications to the verdict of the Military District Court in Warsaw of 19.03.2015. Ref. act So.21/12.
and methods of conducting armed combat in a specific region and at a specific stage of armed conflict. Therefore, the mastery of weapons and armament skills in preparing soldiers for military operations must include RoE training.

This training shall be conducted taking into account the positions occupied by the soldiers and shall be practical in nature, forcing trainees to decide whether or not to use force. Knowledge of the conditions of the use of force will make it easier for commanders and soldiers to make the right decisions during combat and will reduce their unrealistic expectations of supporting actions on the battlefield.

The fact that the soldiers surveyed point to ‘bad RoE’ as the cause of the Nangar Khel Syndrome often results - as one might think - from ignorance, which distorts the cognitive perception of the soldiers. It seems that in conditions of existential fear for survival on the battlefield, many soldiers perceive RoE as ballast, a source of danger for their health and life. For example, when soldiers of a patrol are fired upon by a sniper and the bombardment of the buildings where his fire station is located is not possible due to the threat to civilians there, soldiers often find RoE (TOC or commander) ‘guilty’ of the need to take additional risk to carry out actions, acceptable in given tactical conditions, aimed at eliminating the threat from the sniper. Although knowing the reasons for limiting the use of force will not reduce the stress of the soldiers being fired on, it may prevent the creation of false premises for blaming commanders for incapacity.

The problem of RoE perception is not only a national specificity, as evidenced by the memories of veterans among others25. In the Polish Armed Forces, the NATO’s RoE concept is implemented relatively briefly, so it is possible to understand the negative opinions of Polish soldiers about the principles of using force. They result from a misunderstanding of the reasons for introducing the rules of using force, as well as the basic rules and legal conditions of using violence by state authorities. In the process of preparing soldiers for the use of force it is therefore necessary to emphasize the requirements of observing the principles of the use of force and the law.

Symptomatically, in the indicated examples of fear of using weapons (among Polish soldiers during the operation in Afghanistan, among American soldiers during the operation in Somalia, in subunits of the British army performing tasks in Northern Ireland) this fear became apparent after the law enforcement authorities initiated proceedings for the abuse of weapons, which resulted in the death of non-soldiers. Courts have sentenced soldiers for breaking the rules on the use of weapons and thus causing the death of people, so that investigating authorities prosecuting perpetrators of crimes committed during military operations cannot be blamed for the growing fear among soldiers participating in missions.

Neither can the need to comply with the law when conducting military operations be considered a source of Nangar Khel syndrome. The law of war is probably as old as the wars themselves, the oldest known artefacts with records of norms regulating the rules of

25 In 2004 in Iraq we had become an ineffective occupier because of our overly restrictive RoE and our discomfort with killing the guys that needed to be killed, I. Pantano, Warlord, No Better Friend, No Worse Enemy, New York Threshold Editions 2006, s. 64.
armed combat were created as early as in the 4th century BC\textsuperscript{26}. Nowadays, methods and means of conducting armed struggle during armed conflicts are limited by IHKZ standards, and the principles and conditions for the use of direct coercive measures and firearms in military operations conducted in conditions outside of armed conflict are defined by the system of international human rights standards.

Therefore, soldiers are obliged to comply with the standards of the IHKZ during the armed struggle and to comply with the standards of police law during the maintenance of order and security operations. It seems pointless to point out that the restrictive nature of the law as a reason for fear of using weapons, since the freedom to formulate national laws in this area is limited by the requirement to comply with the standards of international law.

Since the freedom of commanders to choose the means and methods of fighting is limited by law and the rules of using force, training in IHKZ and RoE should be helpful in preventing opinions about being submitted to Nangar Khel syndrome by superiors. If the soldiers are well acquainted with the conditions for the use of force during military operations, they will not be susceptible to cognitive disturbances and their confidence in the decisions made by their superiors on the battlefield will increase.

Shaping the real authority of commanders has always required to be based on knowledge. This truism also includes the knowledge of principles of using force and the ability to pass it to subordinates. Therefore, it is of fundamental importance that commanders of teams, platoons and companies acquire knowledge of these principles and master the ability to pass it on to their subordinates. This simplified and focused justification of the need for RoE can be a useful tool in this process.

Another measure to prevent Nangar Khel syndrome is to train soldiers to exercise their right of individual and collective self-defense.

**Right of Self-Defense**

Mastering the ability to exercise the right of self-defense\textsuperscript{27} should reduce the risk of soldiers being afraid of the negative consequences of using weapons. The ability to use weapons in self-defense is only part of the power to use force in military operations, but it is fundamental and universal. It is fundamental because the acquisition by soldiers of the ability to determine the circumstances which justify the use of weapons in individual or collective self-defense is a condition for their safety and a way to minimize the risk of incidents of unjustified use of force. The universal nature of the right of self-defense, on the other hand, is that it applies to every type of military operation, which allows soldiers of various military specializations to be prepared for the use of weapons in self-defense.

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\textsuperscript{27} A similar postulate of overcoming such moods among American soldiers through RoE training was presented by Gary D. Solis. Videos: G.D. Solis, *The Law of Armed Conflict...*, op.cit., pp. 510-512.
from their first days of military service. In other words, the right of self-defense applies both to operations carried out in conditions of armed conflict and to various crisis situations where the use of armed forces outside of armed conflict occurs\(^{28}\).

Indication of circumstances entitling the use of force in individual soldier’s self-defense and collective self-defense of a subdivision\(^{29}\) requires an analysis of legal conditions of the use of force by the army. Since today the spectrum of tasks of the armed forces goes far beyond the classical sphere of ensuring the external security of the state, understood as defense against the aggression of other states, the analysis could not be limited to the law of armed conflicts alone. Apart from protecting the state’s independence, the Polish Armed Forces also perform tasks related to ensuring the international and internal security of the state\(^{30}\). The implementation of such different tasks by the armed forces requires the use of different methods and means, which also means the use of different powers to use force.

The powers of soldiers to use direct coercive measures and firearms during a military operation conducted in the framework of maintaining public security are distinct from the powers to use means and methods of conducting armed combat governed by the law of war. The value of the rules defining the right of self-defense discussed in the article lies in the fact that they apply during any type of military operation, regardless of the rules on the use of force specified for a specific operation. Therefore, training in the right of self-defense and appropriate training may be given to soldiers at all stages of training, and not only those prepared to participate in operations outside the country.

The use of force by soldiers shall be based on the principles laid down in the IHKZ only during an armed conflict of an international, non-international nature (conducted between the government party and other internal forces) and during the occupation of territory occupied as a result of armed conflict. Increasingly, however, armed forces are being used in conflicts that have not reached the intensity and duration inherent in an armed conflict\(^{31}\), where there are no rules of war. It is irrelevant that such conflicts are described as a hybrid war or a war on terrorism if soldiers do not participate in an armed conflict and are guided by rules of arms use based on police law rather than on the law of armed conflict\(^{32}\).

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\(^{28}\) More about contemporary conflicts, called asymmetrical, hybrid or grey areas between war and peace: W. Mendel, Legal Regimes for the Use of Force by SZRP Soldiers, ‘Bellona Quarterly’ 2017 No. 1, pp. 160-173.

\(^{29}\) The analysis does not include the right to self-defence of states resulting from customary law and Article 51 of the Charter of the United Nations, Journal of Laws of 1947 No. 23, item 90.


\(^{31}\) Article 1(2) of Additional Protocol II to the Geneva Conventions of 12 August 1949 for the protection of victims of non-international armed conflicts, signed in Geneva on 8 June 1977. (OJ 1992 No 41, item 175, Annex) provides that this Protocol shall not apply to such internal tensions and unrest as rioting, isolated and intermittent acts of violence and other similar activities which are not considered to be armed conflicts.

There are fundamental differences between the rules on the use of force in the two legal regimes. For the purpose of this analysis, only two are indicated - the legality of the use of lethal force and the protection of civilians.

According to the law of war, if military necessity so requires, veterans involved in an armed conflict may be the target of an attack and may be deprived of their lives regardless of whether they are threatening the opposing party (fighting) or not, because they are resting (e.g. playing ball or sleeping). In a military operation conducted outside a military conflict, regardless of what is described as a stabilization operation, peace enforcement or counter-terrorist operation, the use of force is governed by international human rights standards and - with some simplification - the police law on the use of force. This means that terrorists, members of armed groups should, in principle, be detained, but not liquidated, and the use of lethal force against them is usually limited to situations where they directly endanger the lives of others.

The protection of civilians is also shaped differently. During an armed conflict it cannot be the target of an attack, but the law, under certain conditions (with respect to the principle of proportionality and military necessity), allows for the occurrence of casualties among these populations, so-called collateral damage, which may occur during attacks on military targets. Apart from armed conflict, the notion of collateral damage is not used, and every case of death of civilians should be thoroughly investigated by the investigating authorities.

Despite the indicated and many other differences between the regimes of the use of force, it is possible to identify universal principles common to all types of military operations, defined by the right of soldiers to self-defense. And it is with this right that the training of soldiers should start.

In the literature on the subject, the RoE doctrine of NATO and the RoE directives issued for specific military operations emphasize that limitations on the use of force cannot deprive soldiers of their right to self-defense. Even in a hypothetical situation of not defining the rules of using force for some military operation, the soldier’s right to self-defense results directly from the applicable legal standards.

Under national law, the right to self-defense during operations outside the country grants soldiers Article 7b of the Act of 17 December 1998 on the principles of use or stay of the Armed Forces of the Republic of Poland outside the country. However, in the situation of using subunits and divisions of the Polish Armed Forces in the internal security system of the state, soldiers are granted the right to use force under the rules specified for the

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34 MC 362/1 NATO Rules of Engagement, par. 7–9.
35 Consolidated text of 2014, item 1510.
36 Provisions granting the President of the Republic of Poland, at the request of the Council of Ministers (Prime Minister), the right to use the SZRP: a) in the internal security system with the right to use force: The Act of 29 August 2002 on martial law and the powers of the Commander-in-Chief of the Armed Forces and the principles of his subordination to the constitutional bodies of the Republic of Poland, i.e. Journal of Laws of 2016, item 851 as amended; Act of 21 June 2002 on the state of emergency, i.e. Journal of Laws of 2016, item 886 as amended; Act of 6 April 1990 on the Police, i.e. Journal
police or Border Guard in the Act of 24 May 2013 on direct coercive measures and firearms\(^\text{38}\), which also includes the right to self-defense.

Both national legal bases\(^\text{39}\) grant soldiers the right to use force to repel a direct and unlawful attack on life, health or freedom. The mark of directness of the attack is related to temporary proximity (the attack has already taken place or will take place at any time), while the requirement of unlawfulness of the attack excludes the right to defend oneself against a legal attack, i.e. one carried out by a competent authority (e.g. by a commander who, acting within the framework of a counterattack of an ultimate military need, deprives a drunken soldier of his freedom) or an authorized person (e.g. a civilian defending his property against a robbery by a soldier).

The NATO doctrine indicates that a soldier and a subdivision may use the necessary and proportionate force, including lethal force, in self-defense in response to an attack or a threat of imminent attack\(^\text{40}\). In case of discrepancies between national self-defense laws and RoE regulations adopted for a specific operation conducted by an international organization, soldiers apply the right to self-defense in accordance with national laws\(^\text{41}\).

Both of these regulations recognize a soldier’s right to self-defense in situations where he will be attacked. Self-defense is the legitimate, necessary and proportionate use of force in response to a direct and unlawful attack\(^\text{40}\). This means that a soldier participating in a military operation has the right to decide for himself to use force in a situation which he considers to be a threat to his life and health. An attack, regardless of whether it is the result of enemy forces or civilians, can be repulsed by force.

However, this does not mean that every attack can be answered with firearms. Those exercising their right of self-defense may not exceed the limits of the necessity and proportionality of the means used in their defense. Therefore, force may only be used if it is necessary\(^\text{41}\) to ensure self-defense and the level of intensity of the force used must be proportionate\(^\text{42}\) to the perception of the level of threat and limited in time to the duration of the threat.

The attacked soldier or commander of the attacked subdivision must assess whether the attack has taken place or may take place at any time and whether hostile action is unlawful, must determine the degree of threat and the means to be used to repel the attack effectively, while maintaining that the means used to repel the attack are commensurate with the threat caused by the attack. Decisions to use force shall be made under the stress

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\(^{39}\) Journal of Laws of 2013, item 628 as amended.


\(^{40}\) MC 362/1 NATO Rules of Engagement, par. 7–9.

\(^{41}\) Ibidem, par. 7.
of the threat, under time pressure, and shall result in the life and health of the soldier, other members of the subdivision, but also the actual or alleged attacker.

The acquisition of such a skill requires active participation in training based on scenarios to practice the soldier’s reaction to hostile behavior that he may experience during a military operation. Key to the training will be to practice the ability to distinguish between direct attack, which entitles you to use your weapon in self-defense, and other actions against which you can only use force on the basis of other powers granted to the soldier.

40 In the national doctrine of criminal law, the concept of assassination is defined as the direct, actual human behavior that is contrary to the norms of criminal law and that poses a threat to a legally protected good.

41 The principle of necessity (minimization of effects) in national law is defined in the Act of 24 May 2013 on Direct Coercive Measures and Firearms, Journal of Laws of 2013, item 628 as amended.

Article 7.1. Direct coercive measures or firearms shall be used or shall be used in a manner which causes the least possible damage.

2. The use or application of coercive measures or firearms shall be abandoned when the purpose of their use or application has been achieved.

3. Direct coercive measures shall be used or applied with special care, taking into account their characteristics, which may endanger the life or health of the rightsholder or another person.

4. When deciding on the use or application of a firearm, special care should be taken and its use should be treated as a last resort.

42 This principle should not be confused with the principle of proportionality, which is one of the principles of the IHK, which is defined in the national law by the Act of 24 May 2013 on Direct Coercive Measures and Firearms, Journal of Laws of 2013, item 628 as amended.

Article 6.1. Direct coercive measures shall be used or applied in a manner necessary to achieve the purposes of that use or application, proportionate to the seriousness of the risk, selecting the measure with the least possible discomfort.

2. Firearms shall only be used or applied if direct coercive measures are used or applied:

1) proved insufficient to achieve the purposes of that use or exploitation or

2) is not possible due to the circumstances of the event.

Threats to soldiers and subdivisions to a level that does not allow the use of force in self-defense are hostile act and hostile intent.

Enemy shall be considered to be deliberate actions which pose a risk of serious damage or danger to the forces conducting the operations and to the soldiers themselves, such as mine-mining operations which limit the ability of the forces to maneuver, the conduct of exercises or military operations with any kind of weapon in the territorial waters of a coastal State without the prior consent of that State, or the non-aircraft of a military aircraft infringing the airspace, without prior authorization.

Enemy intentions are defined as actions that increase the degree of ability to carry out an attack or cause damage while confirming the intention to do so. The San Remo RoE Handbook indicates that the identification of hostile intent must be based on a statement of ability and intention, and countermeasures will be justified if all facts and circumstances known at the time confirm the belief that an attack or use of force is

42 It does not apply to the U.S. Armed Forces, whose self-defense regulations include hostile act and hostile intent. In such situations, the entitlement to use force from SZRP soldiers and other European NATO member states may result from other regulations, e.g. from the granting in the RoE of entitlement to use force in situations as defined in series 42 MC 362/1.

43 San Remo Handbook on Rules of Engagement, D. Mandsager (red.), San Remo, November 2009, s. 22.
inevitable. The publication lists examples of behaviors that may signal hostile actions: aiming at a weapon, taking a position to attack or tracking with radar or laser markers.

The ability to use weapons on the basis of the outlined right of self-defense is important especially in conditions of conflicts below the threshold of war. In a classic armed conflict veterans can be attacked even if they do not pose a threat, so the right of self-defense does not play such an important role. In contrast, in asymmetrical conflict conditions, in anti-partisan actions, when the opponent takes advantage of the protection afforded to civilians or when there are attacks from them - in such situations, the ability to recognize the circumstances justifying the use of a weapon for self-defense is just as important for a soldier as manual skill in using a weapon.

Completion

Sociological research shows that the soldiers of the Polish Armed Forces who took part in military operations outside the country are convinced that their commanders are afraid of using force in combat conditions. The soldiers surveyed claimed that their superiors, for fear of legal consequences, avoided making decisions about using force in situations that required such decisions. The opinions of the veterans were an assumption to consider the possible sources of both the soldier’s conviction revealed in the research and the fear of using force and how to eliminate both of these negative phenomena.

As analyses of the experience of the American and British armies indicate, the phenomenon of fear of using weapons in combat situations is universal and repetitive. It occurs in different armies, affects representatives of all corpses and personal groups and intensifies after incidents in which the legitimacy of the use of weapons is verified in proceedings conducted by law enforcement agencies.

The Nangar Khel Syndrome should be considered as a result of soldiers’ insufficient knowledge of the legal, political and social conditions of the use of force in military operations. This educational deficit, on the one hand, creates unrealistic expectations of soldiers participating in combat operations regarding the possibility of being supported by their superiors by means or methods of combat, the use of which is not allowed in given tactical situations. Ignorance of the limitations of the use of force distorts the assessment of events on the battlefield and causes soldiers to express untrue opinions about the decisions made by their superiors. On the other hand, uncertainty as to the legitimacy of actions may actually affect the failure to use force in situations justifying its use both by soldiers on the battlefield and by soldiers making decisions in tactical command centres. This means that a lack of knowledge of the principles of the use of force can put soldiers at risk of losing their lives and health.

A way to prevent both symptoms of Nanghar Khel Syndrome can be training in the principles of force. It should not be limited to a preparatory period prior to the participation of the military contingent in a military operation outside the country, but should be a permanent feature of the subdepartmental training program. Training on RoE, as well as on IHKZ, should be conducted by means of practical exercises and training that
Training in the rules...

enable soldiers to master the ability to decide on the form and use of force appropriate to their tactical situation.

The article indicates two basic training objectives to effectively eliminate the Nangar Khel syndrome - to make soldiers aware of the limitations of the use of force during military operations and to acquire the ability to use force in self-defense. Superiors at each level of command should strive to raise the level of subordinates’ knowledge of conditions limiting the range of force allowed to be used in military operations. In this way they can reduce the risk of soldiers expressing their opinion of fear as a factor determining the decisions of their superiors. On the other hand, the development of habits in soldiers to apply the law of self-defense will increase their psychological comfort and safety level. The ability to exercise the right of self-defense is also a foundation to facilitate the acquisition of other qualifications related to the principles of using force.

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Practice and experience of using the armed forces


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