

INTERNATIONAL MILITARY MISSIONS LEGALITY- A SINE QUA NON CONDITION FOR SYNTHETIC INDICATORS' ASSESSMENT

Cpt. just. drd. Florentin Adrian ILIE
Direcția Legislație și Asistență Juridică

Abstract

The particular importance given to the quantification (assessment) of the military actions and especially those with a multinational participation through the use of the synthetic indicators, in my opinion is the natural consequence of the extremely rapid development of the society at all levels while diminishing the resources and increasing the financial constraints. The results of this evaluation are relevant only to the extent to which the action (mission) is perfectly legal otherwise both the mission and the quantifying indicators lose their meaning; being illegal, their efficiency could turn into the reverse. Frequent references to Law no. 42 / 15 March 2004 on the participation of armed forces in missions outside the Romanian territory, come to emphasize my conviction that it is remarkable that for such missions Romania has an unambiguous regulation.

The main preoccupation for the effectiveness and efficiency of every activity regardless of its magnitude is, in my opinion, the natural consequence of the society's rapid development as well as the resource limitations and financial restraints. If we add the impact of the world crisis upon all fields of human activities, the concern for maximizing results and decreasing expenses becomes even more necessary in order to sustain the market economy which is now in

dire straits. However, neither efficiency nor effectiveness are abstract terms, for they need quantifying and correcting in order to make them real parameters of the objectives established according to the planned expenses. The research so far has highlighted that establishing these indicators, particularly the synthetic ones, go hand in hand with the planning expectations. It has been shown that setting up these indicators is difficult and has to be subjected to reputed experts' approval. I do not attempt to develop indicators-related aspects since they are not my field of expertise; instead, I will approach the placement of each activity and its assessment in the legal framework that must guide every human (individual, collectivity, community, nation or organization) enterprise; otherwise, the enterprise itself as well as its quantifying indicators lose their significance for the illegal aspects may turn it into its counterpart.

Before elaborating on these aspects, I consider it appropriate to refer to some legal fundamentals as they are presented in various literature sources.

Legislation

Legislation (or "[statutory law](#)") is law which has been [promulgated](#) (or "[enacted](#)") by a [legislature](#) or other [governing body](#). The term may refer to a single law, or the collective body of enacted law, while "statute" is also used to refer to a single law. Before an item of legislation becomes law it may be known as a [bill](#), which is typically also known as "legislation" while it remains under active consideration. Legislation can have many purposes: to regulate, to authorize, to provide (funds), to sanction, to grant, to declare or to restrict.

In some jurisdictions legislation must be confirmed by the [executive branch](#) of [government](#) before it enters into force as law.

Under the [Westminster system](#), an item of legislation is known as an [Act of Parliament](#) after enactment.

Legislation is usually proposed by a member of the legislature (e.g. a member of Congress or Parliament), or by the executive, whereupon it is debated by members of the legislature and is often amended before [passage](#). Most large legislatures enact only a small fraction of the bills proposed in a given [session](#). Whether a given bill will be proposed and [enter into force](#) is generally a matter of the legislative priorities of government.

Those who have the formal power to *create* legislation are known as [legislators](#), while the [judicial branch](#) of government may have the formal power to *interpret* legislation (see [statutory interpretation](#)).¹

Legality

The principle of legality is the legal ideal that requires all law to be clear, ascertainable and non-retrospective. It requires decision makers to resolve disputes by applying legal rules that have been declared beforehand, and not to alter the legal situation retrospectively by discretionary departures from established law. It is closely related to [legal formalism](#) and the [rule of law](#) and can be traced from the writings of [Feuerbach](#), [Dicey](#) and [Montesquieu](#).

The principle has particular relevance in criminal and administrative law. In criminal law it can be seen in the general prohibition on the imposition of criminal sanctions for acts or omissions that were not criminal at the time of their commission or omission. The principle is also thought to be violated when the sanctions for a particular crime are increased with retrospective effect.

In administrative law it can be seen in the desire for state officials to be bound by and apply the law rather than acting upon whim. As such advocates of the principle are normally against discretionary powers.

¹ <http://en.wikipedia.org/wiki/Legislation>

The principle can be varyingly expressed in Latin phrases such as *Nullum crimen, nulla poena sine praevia lege poenali* (No crime can be committed, nor punishment imposed without a pre-existing penal law), *nulla poena sine lege* (no penalty without law) and *nullum crimen sine lege* (no crime without law).

International Law

Legality, in its criminal aspect, a principle of international human rights law, and is incorporated into the [Universal Declaration of Human Rights](#), the [International Covenant on Civil and Political Rights](#) and the [European Convention on Human Rights](#). However the imposition of penalties for offences illegal under [international law](#) or criminal according to "the general principles of law recognized by civilized nations" are normally excluded from its ambit. As such the trial and punishment for [genocide](#), [war crimes](#) and [crimes against humanity](#) does not breach international law.

Constitutional Law

The principle of legality can be affected in differing ways by different constitutional models. In Britain under the doctrine of [Parliamentary sovereignty](#), the legislature can (in theory) pass such retrospective laws as it sees fit, though article 7 of the international convention on human rights, which has legal force in Britain, forbids conviction for a crime which was not illegal at the time it was committed. Article 7 has already had an effect in a number of cases in the British courts.

In contrast many written constitutions prohibit the creation of retrospective (normally criminal) laws. However the possibility of statutes being struck down creates its own problems. It is clearly more difficult to ascertain what is a valid statute when any number of statutes may have constitutional question marks hanging over them. When a statute is declared unconstitutional, the actions of

public authorities and private individuals which were legal under the invalidated statute, are retrospectively tainted with illegality. Such a result could not occur under parliamentary sovereignty (or at least not before [Factortame](#)) as a statute was law and its validity could not be questioned in any court²

Legality is the general law principle according to which state authorities, public institutions and all citizens must obey the law, and their conduct must follow it. This principle states the supremacy of law in every social activity.³

The general principle of law is stipulated in the Constitution, which says that “obeying the Constitution, its supremacy and its laws is mandatory”.⁴

One can easily notice that legality is the result of following legislation regardless of its array and field. Also, it is clear that on organization so well organized, structured and hierarchical such as the military one must found its activity on the legal provisions, thus ensuring its legal character. Any breach of this status, regardless of situation or time, has extremely serious consequences. In this respect, it is illustrative the illegal way in which the military was used in December 1989, whose result is well known already.

The legality of military interventions, including the Alliance, is even more necessary in the case of international missions due to the numerous factors that affect the military conduct as well every military’s behavior in the theater of operations. In this respect, the lessons learned are significant for they offer most relevant conclusions.

² <http://en.wikipedia.org/wiki/Legality>

³ http://www.rubinian.com/dictionar_detalii.php?id=538

⁴ <http://www.euroavocatura.ro/dictionar/1566/Legalitate>

Mention should be made that Romania has an unequivocal regulation, that is, **Law no. 42 of 15 March 2004 regarding the participation of the armed forces in the missions outside the Romanian state's territory** published in the Official Gazette, part I, no. 242 of 18 March 2004.

According to Art. 2 of this law, the armed forces may participate in the following missions abroad: collective defense, peace support, humanitarian, coalitions, joint exercises, individual, ceremonies, whereas Art. 3 specifically stipulates: **Armed Forces may participate in the missions stipulated in Art. 2, in accordance with the legal provisions and the obligations undertaken by Romania in terms of treaties, agreements and other international documents of which it is a party.**

The exceptional importance of these missions is highlighted in Art. 7(1): Deploying armed forces outside the Romanian state's territory on the missions stipulated in Art. 2 is approved, upon the prime minister's proposal, by the President of Romania, after consulting the Country's Supreme Defense Council. The President informs the Parliament upon the decision within 5 days from adopting it, and if the Parliament is on vacation, upon the commencement of the ordinary or extraordinary session, as the case may be.⁵

Therefore, it is clear that our armed forces' engagement outside the national territory takes place after the decision made by Romania's highest leadership level, even if we are NATO members.

⁵ **Law no. 42 of 15 March 2004 regarding the participation of the armed forces in the missions outside the Romanian state's territory** published in the Official Gazette, part I, no. 242 of 18 March 2004.

Similarly, for legal purposes, Art. 12 stipulates: (1) Should the Romanian detachment's commander receive an order or a guideline from the mission's superior hierarchical authorities, which contravenes to the international legal or combat norms, he shall refuse to execute them. (2) In the case presented in paragraph (1), the Romanian detachment's commander shall immediately inform the Romanian hierarchical superiors and follow their instructions.

Some experts argue (and I fully agree) that Law no. 42/2004 aims at increasing decisional efficiency in the sense of increasing the operational nature of the armed forces' in international missions. In pursuing this objective, the normative act delineates a decisional system based on 3 fundamental principles:

1. legal stipulation of the circumstances under which armed forces may participate in missions outside the national territory;
2. planning financial resources necessary to train the troops for missions;
3. increasing the role of the President of Romania in making the decision of sending forces outside the national territory as well as increasing the Parliament's control.

The main elements contributing to defining some missions is its triggering legal act. Apart from it, other details can be mentioned according to each particular situation. Every mission of Romanian armed forces must be funded on an obligation assumed by means of an international treaty approved by Romania's Parliament.⁶

Finally, I reiterate the critical obligation of every political and military decision-maker in order to ensure the legal character of all international military actions. This enhances its effectiveness and efficiency assessed by using modern

⁶ LTC CONSTANTIN ZANFIR **LEX** The military legal advisers' magazine, no. 1 / 2005

indicators-based tools for I argue that respecting the legal character of international military missions is the pre-requisite of the assessment of synthetic indicators.

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