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Published in:
NL ARMS Netherlands Annual Review of Military Studies 1998

Publication date:
1998

NL ARMS

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The Commander's Responsibility

in Difficult Circumstances

The *Netherlands Annual Review of Military Studies* is published under the auspices of the Royal Netherlands Military Academy at Breda. The cover image of Nezahualcoyotl, a fifteenth-century monarch of the city-state of Texcoco, was reproduced from Serge Gruzinski's *Painting the Conquest - The Mexican Indians and the European Renaissance*.
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NL ARMS

1997: The Bosnian Experience
J.L. Soeters and J.H. Rovers (eds.)

1998: The Commander's Responsibility in Difficult Circumstances
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Series Supervisor: J.L. Soeters
Head of the Academy Research Centre

Printed and bound in the Netherlands by Gianotten BV, Tilburg

ISSN: 0166-9982

The Military Commander, UN Operations and Human Rights[1]

W.J.M. VAN GENUGTEN AND L. ZEGVELD

1. Introduction

Anything that can go wrong as far as human rights are concerned will usually go wrong in times of war. Societies which are able to reasonably control themselves in normal circumstances will in wartime provide the stage for serious violations of international law. Often the Security Council will then become involved and UN and other troops will be sent to maintain or enforce peace. In this article we are concerned primarily with the role of the military commander in the field and how that can contribute, during such peace operations, in knitting peace and security and human rights more closely together. To this end we will examine the following related issues. What tasks are given by the resolutions of the Security Council to military commanders in the field as far as human rights are concerned? Should they be overseeing the observance of human rights? Is this their duty because of international law, because of the authority invested in them or because of their conscience? What does 'overseeing the observance of' entail? And what are the legal and practical problems involved in all this? Before turning to these matters, we will first provide a short overview of the framework in which the international norms protecting human rights have been laid down, and give an outline of the concern of the Security Council with human rights.

In this article we will limit ourselves to those violations of human rights that have been committed by warring parties, and, more specifically, those violations of which the civilian population was the victim. This means that the military commanders of the peace operations and their subordinates are left out as far as their observance of and their being the victim of violations of human rights are concerned.

2. The Normative Framework: International Human Rights Law, International Humanitarian Law and International Criminal Law

The basic norms for the protection of life, liberty, safety and security of person have been established in three systems of international law: international human rights law, international humanitarian law, and international criminal law.[2]

International human rights law applies at any time, i.e. in times of peace and armed conflict.[3] Human rights place first and foremost an obligation on the state as distinct from other actors involved in the armed conflict. The three most important human rights instruments that make up the so-called International Bill of Human Rights are the Universal Declaration of Human Rights of 1948, and the International Covenants of 1966[4] on Civil and Political Rights and on Economic, Social and Cultural Rights. Most other human rights treaties build on these three instruments.[5]

International humanitarian law (IHL) consists of the norms which warring parties should adhere to in times of armed conflict. Central to IHL is the principle that individuals who are no longer participating in the fighting - whether it be civilians or sick or wounded soldiers - are entitled to humane treatment, i.e. no torture, no random arrests, no camp detentions, etc. IHL also includes the right of impartial humanitarian organisations to be allowed to offer their services to these non-combatants. IHL is codified in a number of treaties of which the four Geneva Conventions of 1949 and the two 1977 Additional Protocols thereto are the most important. The Geneva Conventions are among the most widely ratified international instruments. Approximately two-thirds of the states have also ratified both Protocols.[6] The few states that have not ratified the Geneva Conventions are, however, still subject to much of the treaties since these are part of customary international law. The Statute of the Yugoslav Tribunal states that 'the part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in the Geneva Conventions of 12 August 1949 for the Protection of War Victims.'[7] Also relevant in this respect is the so-called Martens clause that is laid down in Additional Protocol I of 1977 which says that '[i]n cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.'[8]

International criminal law, finally, also protects a number of fundamental human rights. This body of norms distinguishes itself from the aforementioned two in that it turns a violation of human rights into a criminal offence and in that, in principle, it applies only to individuals.[9] International criminal law overlaps international humanitarian law. Torture, for instance, constitutes a 'grave breach' of the Geneva Conventions of 1949 for which the individual will be held criminally responsible.[10] Separate treaties have been drawn up that provide additional international criminal norms. Torture, to use the same example, is an international crime under

the Torture Convention of 1984. This Convention also applies in times of war.

Whenever we discuss human rights in the remainder of this article, we are referring to the term in a broad sense, i.e. human rights as laid down in the international human rights law, IHL (including the rules concerning humanitarian relief), and international criminal law.

3. The Concern of the Security Council with Human Rights

UN peacekeeping and peace-enforcing operations are legitimised by Security Council decisions. Such decisions also determine the military commander's mandate with regard to human rights. However, the Council's concern with human rights is not without problems. We will discuss three such problems. First, questions have been raised about the Council's authority in dealing with internal armed conflict. To a large extent the Council's authority stems from Articles 24 and 39 onwards of the UN Charter, which deal with the 'responsibility for the maintenance of international peace and security'[11] and the competence to determine the existence of any threat to the peace, breach of the peace or act of aggression.'[12] Do these norms provide the Council with the competence to interfere in internal wars? One possible answer could be that there is growing international awareness that there is a duty to interfere if intra-state disorder might lead to genocide or other systematic violations of the most fundamental human rights. And although it might be debated whether or not this approach is fully covered by existing international law, the former Dutch Defence Secretary, Joris Voorhoeve, was correct when he stated that in considering the importance of a nation's sovereignty against the interest of its population the principles of humanity should outweigh those of sovereignty.[13]

A second problem of the Security Council's involvement in human rights is that the Council's actions have made 'the maintenance of humanitarian law part of its attempts to restore international peace and security'.[14] In the Bosnian conflict the Security Council even seemed to be of the opinion that humanitarian relief by itself will restore international peace and security or, in any case, will substantially contribute to this process.[15] However, the goal of international human rights norms and IHL is 'to humanise war', not to end it.[16] These norms were not designed to end a war. This does not imply that these norms cannot contribute to the restoration of peace. As the Dutch Ministerial Advisory Council for Peace and Security said in its report 'Lost Innocence, the Netherlands and UN

Operations', humanitarian relief can contribute to taking away the conflict's sharp edges. Indirectly, humanitarian relief could help develop relations between warring factions which could, albeit slowly, create an atmosphere in which a political settlement of the conflict draws nearer. Humanitarian aid can therefore do more than simply aid the civilian population in overcoming the consequences of an armed conflict.[17]

To this the Advisory Council added that if humanitarian aid is to have such a positive effect, favourable circumstances are required. If circumstances are less favourable, humanitarian aid could contribute to lengthening the conflict because the parties involved all profit from it. Providing aid may also hurt the image of an impartial UN. The Advisory Council refers, for example, to Somalia, but similar negative effects of humanitarian relief can be observed in the conflict in Bosnia-Herzegovina.

Third and finally, the International Committee of the Red Cross (ICRC), the primary guardian of the Geneva Conventions, has pointed out the risks of the Security Council encroaching on the neutrality of international humanitarian law when it involves itself with human rights. The ICRC believes that there is substantial risk that providing humanitarian relief becomes politicised the moment the Security Council interferes,[18] especially in those conflicts where the UN is regarded as a party to the conflict instead of a neutral third party. The Dutch Red Cross explained that the long experience of the ICRC in war zones has shown that neutrality is a prerequisite for effective activities. The ICRC therefore stays out of the political controversies surrounding a conflict. Doing so enables the ICRC to negotiate with all parties about the maintenance of international humanitarian law, about entry to camps and about the unification of families.[19]

The relationship between the Security Council and human rights has a bearing on the responsibility of the commander in the field vis-à-vis the maintenance of human rights. In the remainder of the article we will discuss the duties and competencies of the military commander rising from the Security Council resolutions and the problems that may arise in fulfilling these tasks.

4. Supervising Compliance with Human Rights: the Military Commander's Mandate

What do the human rights clauses in the Security Council's resolutions mean for the commander in the field? Before we explore this question we need to point out that international human rights law,

IHL, and international criminal law do not place the military commander under the *obligation* to maintain human rights. Not only does this imply that the legal obligation to supervise compliance with human rights is absent, but also, in a strict sense, the *authority* to do so. International organisations, including those involved in operations like UN peacekeeping missions, have the authority to act only when that authority has been explicitly granted to them by states. It is therefore up to states, possibly within the framework of the Security Council, to create the competence for supervision of compliance with human rights during peacekeeping operations.[20] However, some organisations, like Amnesty International, believe that commanders should always report human rights violations, even if this is not explicitly stated in their mandate.[21] To support its argument, Amnesty refers to a statement made by former Secretary General Boutros Boutros-Ghali on MINURSO:[22]

> While MINURSO's current military mandate is strictly limited to the monitoring and verification of the cease-fire, MINURSO, as a United Nation mission, could not be a silent witness to conduct that might infringe the human rights of the civilian population.[23]

Yet Boutros-Ghali's statement is not a legal norm. And although it is hard to contradict Amnesty's point of view, Amnesty's view holds the danger that human rights are qualified on moral, non-legal grounds as norms which can be upheld by anyone. It is therefore without question preferable to establish the commander's obligation and authority as far as the supervision of compliance with human rights are concerned in a mandate prescribed by Security Council resolutions or in Rules of Engagement (ROE) approved by the Security Council.

Which obligations and what authorities have military commanders been given in past resolutions of the Security Council? We will concentrate on the Security Council resolutions and the ROE of a UN peacekeeping operation in the former Yugoslavia: UNPROFOR. In order to provide some deeper understanding of what was and what was not expected of the military commander in that operation it is useful first to distinguish three different forms of supervision which can be included in a mandate or the ROE. It can then be ascertained which did or did not fall within UNPROFOR's mandate.

The first form of supervision concerns the reporting of observed violations; the second form is the determination of the occurrence of a violation or of the risk that a violation is going to be committed and the subsequent intervention to prevent or minimise the violation; and the third form bears on the prevention or minimi-

sing of violations of human rights which were first defined as such by the Security Council.

As to the first form of supervision, UNPROFOR's mandate did not prescribe the military commander's duty to report. The duty to report was placed on individual states. The Security Council called:

> upon States, and as appropriate, international humanitarian organisations, to collate substantiated information in their possession or submitted to them relating to the violations of humanitarian law, including grave breaches of the Geneva Conventions, being committed in the territory of the former Yugoslavia and to make this information available to the Council.[24]

States could also receive such information, among others, from their military commanders in the field, but the legal responsibility to report was that of the state and the Security Council, not that of the commander in the field. This also implied that it was up to states and the Security Council to give information about human rights violations to UN institutions like the different UN rapporteurs for human rights, the treaty-based committees and the United Nations High Commissioner for Refugees (UNHCR) in the same, reverse way as these can provide such input on human rights violations to states and the Council.

The second form of supervision concerns the determination of a violation followed by the intervention in order to prevent or repress the violation. In this case the military commanders' mandate would include supervision of compliance with international human rights law, IHL, and international criminal law. They would first have to ascertain whether or not one of the parties involved in the conflict has in fact committed a violation, and then act accordingly. The commanders would in this way act as quasi-legal institutions. It is obvious that such a task, when formulated in general terms, is unsuited for a commander. UNPROFOR's mandate or ROE did not refer to such supervisory duties.

The third form of supervision, finally, which was explicitly prescribed by UNPROFOR's mandate and ROE, concerns intervention to prevent or repress human rights violations after such violation was determined first by the Security Council itself. In that case the Council acts like a quasi-legal institution, supported sometimes by information provided by UN human rights organisations. With regard to the conflict in Bosnia-Herzegovina, the Council determined human rights violations in numerous resolutions. In Resolution 819, for example, the Council stated that it:

> condemns and rejects the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas as well as from other parts of the republic of Bosnia and Herzegovina as part of its overall abhorrent campaign of "ethnic cleansing",

and it reaffirmed 'its condemnation of all violations of international humanitarian law, in particular the practice of "ethnic cleansing".'[25]

In Resolution 836 the Security Council then instructed UNPROFOR to protect the civilians in the safe areas and to disarm the soldiers, paramilitaries and armed civilians in these areas.[26] UNPROFOR was given similar authority in order to protect humanitarian relief operations. This authority was based on an earlier statement of the Security Council that 'impediments to the delivery of humanitarian assistance constitute a serious violation of international humanitarian law'.[27]

In order to fulfil this supervisory task the military commander need not themselves judge if certain acts are in violation of human rights norms, IHL, or international criminal law. They have "only" to consider those norms which the Security Council has judged to have been violated. The resolutions of the Security Council are therefore the standard a soldier uses to judge events in the field. UNPROFOR's ROE affirm these limitations of the commander's duties. The ROE that dealt with the authority to search buildings stated that:

> searches of buildings are not to be conducted at random. They will only be carried out in response to specific evidence that indicates the probable presence of a violation of the Vance Plan or UN Security Council Resolution.[28]

The fact that the task of a military commander to supervise compliance with human rights is restricted and prescribed does not, however, mean that his job in the field is simple.

5. Implementation of the Mandate in the Field

In order to do his job in the way described above a military commander must know the contents of the Security Council's resolutions. In the case of the former Yugoslavia this required a bit of effort: between 1991 and 1995, for instance, the Council adopted almost one hundred resolutions.

Not only their number might pose problems for their imple-

mentation but also their contents. Council resolutions are often phrased in general terms. Notwithstanding its quasi-legal actions, the Council remains first and foremost a political body. Its statements on human rights are usually formulated in vague and general terms.[29] Take Resolution 819, for example, in which the Council condemned 'all violations of international humanitarian law, in particular the practice of "ethnic cleansing"'.[30] Apart from ethnic cleansing, this statement did not specify what the other violations are. The Council did not even state which body of humanitarian law it is referring to: the one dealing with internal conflicts or the one dealing with international conflicts. The mandate is therefore ambiguous and its wording removed from the everyday reality of the peace operation.[31] Thus military commanders must after all play the part of quasi-legal institution if they are to implement the Council's resolutions, requiring knowledge about the nature and scope of the international rules which protect human rights. However, this body of rules is so huge that no commander may be expected to possess a comprehensive overview. In view of this, as a minimum, commanders should be made familiar with the rules which protect the most fundamental of human rights as well as with those rules that are being violated in the country where a peace operation is to be executed. The latter can of course change as the operation progresses: what was first a problem need not be so as time goes by, and vice versa. This provides good reasons for close co-operation with the various UN rapporteurs on human rights, the treaty-based committees and the High Commissioners for Human Rights and Refugees as well as large NGOs like Amnesty International, Helsinki Watch, the International Commission of Jurists, the International Red Cross, and Médecins Sans Frontières. These organisations can report any misdoings concerning human rights and in doing so provide the UN commanders on the spot with the required information to evaluate the local situation.

The above implies that a UN commander will have to make every effort to allow people and organisations whose job it is to report on human rights violations to do their work. In the words of the former UN observer for the former Yugoslavia, Tadeusz Mazowiecki: 'The United Nations should neither tolerate nor accept a situation in which the authorities are refusing to cooperate with human rights protection mechanisms established by the [Human Rights] Commission.'[32] In the case of the former Yugoslavia this also holds true for those individuals and organisations investigating crimes which might be tried at the Hague Tribunal. In these instances it would be the task of the military commander to contribute to making sure the fact finders can do their job and are given active assistance, if necessary.

Apart from the problems that arise because of the number of resolutions of the Security Council and the vagueness in the commander's mandate, the application of international law concerning human rights in concrete situations also has its problems. Often it is unclear, for example, who is being protected by this law. The Zairean refugee camps at the time contained Hutus that were involved in the genocide of the Tutsis in Rwanda in 1994. The Tutsi rebel army held the camps under siege. The Zairean army, which was afraid to fight itself, was arming the Hutu refugees. Who then is the perpetrator and who the victim? In other words: who was entitled to protection? Organisations like Amnesty International and Médecins Sans Frontières (MSF) have constantly been drawing attention to this dilemma. MSF, for example, wrote in a report on the Rwandan refugee problem that:

> for an organisation such as MSF the debate is whether it should continue to provide humanitarian assistance to a refugee population which is used by the perpetrators of the genocide as a means to increase their power. Whether in these circumstances it would be justified to cease the humanitarian assistance to the refugee population presents a moral dilemma for the organisation. Some say such a situation is contradictory to the principles of humanitarian assistance. Others say that the humanitarian principles demand the continuation of humanitarian assistance while at the same time raising a critical voice.[33]

'Raising a critical voice' and pointing out the failures of the UN and the international community is exactly what MSF has been doing in past situations such as the Rwandan refugee situation. Jacques de Milliano, the former chairman of the Dutch branch of MSF, said:

> We have twice published a report about the disgraceful state of affairs in the Rwandan refugee camps for the benefit of the international community. Violations of human rights may not be allowed to pass unpunished. And humanitarian assistance must not be permitted to become a tool in the hands of criminal leaders. (...) A plea which fell on deaf ears in the international community.[34]

De Milliano is right, although, unfortunately, he should not have expected any other response in view of the position of human rights in the international political order. Many people do not view, we believe, opinions such as those held by MSF as a moral dilemma, but as an unavoidable side-effect: not something to lose sleep

over nor something that should lead to more specific mandates for peace operations.

6. Codes of Conduct for Soldiers

Above we have stated that the military commander should be able to rely on and will be helped greatly by a clear mandate and practical Rules of Engagement. We showed that UNPROFOR's mandate did not fulfil this criterion. Mandates as contained in the Security Council resolutions and ROE will, however, never be comprehensive and will always leave room for or oblige the commander in the field to use their own initiative, for such texts can never cover every possible situation. The commander will then have to draw on their own judgement and creativity.

For the past few years a debate has been going on in the Dutch armed forces about codes of conduct. One of the points in the debate is that soldiers might end up in unforeseen circumstances where they will have to use their own judgement. As Lieutenant General Van Baal, the Dutch deputy Chief of Defence Staff, stated:

> Actions should be based on a code of conduct aimed at each individual and which cannot be enforced by law but which provides support in difficult circumstances when a soldier is required to make ethical decisions.[35]

Such a code could provide support for commanders when they are confronted, in the field, with violations of the fundamental norms of international law. If, however, this is the reason for the present discussions about codes of conduct - which we believe ought to be more and go deeper than a discussion about the wearing of earrings and suchlike matters - then it can easily be determined that the present (draft) codes fall rather short. If we examine, for instance, the recently established General Code of Conduct for the Dutch armed forces, we read phrases such as that 'military personnel will adhere to the national and international rules of law' and that they should show 'respect for fellow human beings, irrespective of their race or culture'. The draft proposal for the code of conduct for air force personnel uses similar phrases. Both codes are a good start but neither codes advocates a more active approach to the protection of human rights, which is supposed to be central theme of the debate. The Royal Netherlands Army's code of conduct is slightly better in this sense. Its sixth article is formulated as follows:

> I will respect human rights and will adhere to the law on armed conflict. I will treat all people in equal fashion and with respect,

and will provide, if possible, aid to my fellow human beings in need.

The code of conduct for the Royal Netherlands Military Constabulary contains a similar article, which states that 'the fundamental human rights must always be the guiding principle for the actions [of each military policeman]'.[36] These clauses are something at least, but the question is whether they are sufficient. Our answer to that question would be negative. It is hard to imagine that these formulations will help commanders to act when confronted with violations of human rights. Major General Homan has stated that a code of conduct is necessary to check the danger 'that the armed forces stumble from one incident to the next as far as ethical matters are concerned'.[37] Put in this light it is not difficult to ascertain that the currently available texts offer little help.

One of the explanations for this shortcoming probably lies in the fact that these codes are meant to be used in all sorts of different situations, including completely dissimilar peace operations. A better option seems to be to draw up different sets of 'rules of engagement for ethical actions': one for peace operations in general and another for each peace operation in particular. The latter can then be geared to the mandate for that particular peacekeeping force as well as to the violations of human rights which might be expected to occur during that particular operation.

The question might arise why such texts can be made on the national level, while at the international level - read Security Council - it is so difficult to reach consensus or to insert detailed human rights paragraphs in the mandates at all. To this question many answers can be given. The main one, however, seems to be that the circle of discussants on the national level is relatively small, while the Dutch army, partly due to recent experiences, is sensitive to human rights issues. This combination may lead to results which on the international level can not yet be achieved.

In addition it might be wise to start working on what the legal profession terms 'case law'. There will always be cases in which the military commander acted inadequately in the eyes of public opinion, human rights and humanitarian aid organisations, or UN human rights bodies. By taking such criticism seriously, by carefully investigating its validity, by reporting the results in the military press and elsewhere, and by setting up an easily accessible database, a substantial contribution can be made to the development of a moral code which is capable of providing real and solid support in critical circumstances.

7. Concluding Remarks

Generally speaking it can be said that peace operations are beneficial to the realisation of human rights. Because they are aimed at normalising situations, they usually contribute to prospering of human rights, such as the right to life and security of person, the absence of torture practices or the right to food, housing and medicines. But peace operations and the transitional situations in which they usually take place can last for long periods of time and the operations themselves are no guarantee that gross violations of human rights, IHL, and international criminal law will not occur: humanitarian assistance, especially food and medicines, is not allowed through; people are aggressively made to confess; civilians are shot summarily at random; people are forced to move leading to streams of refugees; prisoners of war are treated badly; civilians are held hostage; a properly functioning legal system is absent; non-military property is destroyed, and so on and so forth. All these sorts of violations of international law have regularly been witnessed by helpless UN commanders.

In this article we have attempted to explain what may be expected of a military commander as far as the supervision of compliance by local actors with human rights is concerned. We have also considered some of the problems involved, emphasising the international legal aspects. There are, however, various other problems, of a non-legal nature, which may make it impossible for a commander to stop violations of international law. One could think of problems having to do with the personnel make-up of a unit, its weaponry, etc. A lot remains to be said and discussed.

The commanders' role as a leader vis-à-vis the supervision of compliance with human rights by their subordinates is of decisive importance: on the battlefield, in and around refugee camps, everywhere. It is the responsibility of the commander to take the necessary measures to make the resolutions of the Security Council work in practice. Failing leadership will create a fatal gap between the actions of individual soldiers and the, hopefully adequate, intentions of their commanders.

Notes

1. This article is an amalgamation of two earlier articles, in Dutch, which appeared in the *Militair Rechtelijk Tijdschrift* [Military Law Review] in May 1996 and March 1998.

2. Cf. Bassiouni, M.Ch., 'Enforcing Human Rights through International Criminal Law and through an International Criminal Tribunal', in: L. Henkin and J.L. Hargrove (eds.), *Human Rights: an Agenda for the Next Century,* Studies in

Transnational Legal Policy, No. 26, The American Society of International Law, Washington D.C., 1994, p.349.

3. During states of emergency, which include armed conflicts, states are allowed, under certain conditions, to deviate from some of the human rights norms. Cf. W.J.M. van Genugten, 'Vredesoperaties en mensenrechten: de lange weg naar een verstandshuwelijk [Peace operations and human rights: the long road to a marriage of convenience]', *Militair Rechtelijk Tijdschrift,* May 1996, p.186.

4. On 31 May 1998 the Convention on Civil and Political Rights had been ratified by 140 states. The Convention on Economic, Social and Cultural Rights had been ratified by 137 states.

5. Cf. Bassiouni, p.349.

6. On 31 May 1998, the four Geneva Conventions had been ratified by 188 states. On this date Protocol I (on international armed conflict) had been ratified by 150 states and Protocol II (on non-international armed conflict) by 142 states. The possibility which was created in Article 90 of the First Protocol to allow fact finding missions by specially created committees had, however, been accepted by just 53 states.

7. Cf. UN Document S/25704, p.9, adopted by the Security Council on 3 May 1993. Italicization by the authors.

8. Article 1(2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. A similar provision appears in the preamble of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

9. Paust, J.J., M.Ch. Bassiouni, S.A. Williams, M. Scharf, J. Gurule and B. Zagaris, *International Criminal Law,* Carolina Academic Press, Durham, 1996, p.13.

10. Cf. Articles 146 and 147 of the fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

11. UN Charter, Article 24, subsection 1. Italicization by the authors.

12. UN Charter, Article 39.

13. Cf. Voorhoeve, J., 'Veiligheidsbeleid Verenigde Naties onderhevig aan veranderingen [UN's security policy subject to change],' in: *Jason Magazine,* August 1995, p.23. A different answer to the question about the authority of the Security Council would be that it is the Council itself that determines in which situations it gets involved, and that international law does not provide the means to stop the Council. A recent example of the Council questionably exercising its authority concerned the setting-up of the Yugoslav Tribunal.

14. Cf. Baarda, T. van, 'Vredesmachten en militaire hulp: van improvisatie naar structuur. Een pleidooi voor een raamovereenkomst [Peacekeeping forces and military aid: from improvisation to structure. A plea for a general agreement],' in: H.J. van der Graaf, D.K. Schut and H.W. Bomert (eds.), *Het vredesproces in beweging* [The peace process in motion], Studiecentrum voor Vredesvraagstukken, Nijmegen, 1994, pp.136-7.

15. Apart from UNPROFOR's task 'to deter attacks against the safe areas', one of its

main tasks was 'to ensure the delivery of humanitarian assistance'. Cf. Resolutions 761 and 764 respectively. Other UNPROFOR tasks were: the evacuation of casualties from the war zones (Resolution 819), offering protection to convoys of released prisoners at the request of the International Red Cross (Resolution 776), and supporting the UN High Commissioner for Refugees in providing humanitarian aid (Resolution 776). The result of all this was, as Higgins puts it, that 'UNPROFOR [was] being required to engage in tasks that have sometimes been ancillary to peacekeeping proper, but never demanded of a UN force in the absence of peacekeeping'. Cf. Higgins, R., 'The New United Nations and Former Yugoslavia', *International Affairs*, 69, 3, 1993, p.468.

16. Kalshoven, F., *Constraints on the Waging of War*, International Committee of the Red Cross, Geneva, 1987, 2nd edition, 1991, p.1.

17. Adviesraad Vrede en Veiligheid [Ministerial Advisory Council for Peace and Security], *Verloren onschuld, Nederland en VN-operaties* [Lost innocence, the Netherlands and UN Operations], Nr. 20, April 1996, p.27. In this report the Council also concluded that there is evidence that humanitarian aid in Mozambique had a positive effect and contributed to bringing the parties closer together.

18. Cf. The Dutch government's Memorandum on humanitarian aid which was sent to Parliament on 12 November 1993. *Humanitaire hulp tussen conflict en ontwikkeling* [Humanitarian aid between conflict and development], Kamerstuk 23527, nr. 1, p.45.

19. Netherlands Red Cross, *Omwille van de menselijkheid* [For the sake of humanity], August 1993, p.13. For a more elaborate discussion of the position of the International Red Cross and MSF, cf. W.J.M. van Genugten, 'De Veiligheidsraad en het Internationale Humanitaire Recht: de Rode Kruislijn of die van Artsen zonder Grenzen? [The Security Council and International Humanitarian Law: the Red Cross appraoch or that of Médecins Sans Frontières?]', *Jason Magazine*, May 1995, pp.2-4.

20. Cf. Hoof, G.J.H. van, and K. De Vey Mestdagh, 'Mechanisms for International Supervision', in: P. van Dijk (ed.), *Supervisory Mechanisms in International Economic Organizations*, Deventer/Den Haag, Kluwer/T.M.C. Asser Instituut, 1984, p.10.

21. Amnesty International, *Peacekeeping and Human Rights*, January 1994, (AI Index: IOR 40/01/94), p.24. Cf. also M.T. Kamminga, 'De noodzaak van een gedragscode voor deelnemers aan vredesmachten [The necessity of a code of conduct for participants in peacekeeping forces]', *VN Forum*, 10, 1997, p.13.

22. MINURSO: the United Nations Mission for the Referendum in Western Sahara. The mission has been in effect since September 1991.

23. Op. Cit. Amnesty International p.25.

24. Security Council Resolution 771 of 13 August 1992, paragraph 5.

25. Resolution 819 of 16 April 1993, paragraphs 6 and 7.

26. Rules of Engagement, pp.2-3.

27. Resolution 819 of 16 April 1993, paragraph 8.

28. Rules of Engagement, Cordon and Search Operations, p.6.

29. Cf. Bedjaoui, M., *The New World Order and the Security Council - Testing the Legality of Its Acts,* Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1994, p.21.

30. Paragraph 7 of Resolution 819.

31. Cf. Adviesraad Vrede en Veiligheid [Ministerial Advisory Council for Peace and Security], *Verloren onschuld, Nederland en VN-operaties* [Lost innocence, the Netherlands and UN Operations], Nr. 20, April 1996, p.14.

32. Final Report, 18 September 1995, A/50/441, p.26.

33. Médecins Sans Frontières, *Deadlock in the Rwanda Refugee Crisis: Virtual Standstill on Repatriation,* July 1995, p.39. Cf. too: Médecins Sans Frontières, *Breaking the Cycle, MSF Calls for Action in the Rwandese Refugee Camps in Tanzania and Zaire,* November 1994, p.12.

34. De Milliano, J., 'Humanitair recht [Humanitarian law],' *Hulppost,* maandblad Artsen zonder Grenzen [Aid post, monthly magazine of the Dutch branch of MSF], December 1995, p.3.

35. Homan, C., 'Een gedragscode voor peacekeepers? [A code of conduct for peacekeepers?]', *VN Forum,* 10, 1997, p.9. The article also contains an overview of the Dutch debate on codes of conduct.

36. An overview of all these codes can be found as an appendix to: L. Wecke, 'Gedragscodes voor de krijgsmacht: effectief hulpmiddel of overbodige algemeenheid? [Codes of conduct for the armed forces: a useful tool or superfluous generalities?]', in: B. Bomert and H. de Lange (eds.), *Jaarboek Vrede en Veiligheid 1997* [Yearbook peace and security 1997], Studiecentrum voor Vredesvraagstukken, Nijmegen,1997, pp.159-180.

37. Ibid. fn 35, p.11.