

# Rules of Engagement and the Experiences of Dutch Soldiers during UNPROFOR and IFOR<sup>1</sup>

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*'Abstract terms and theories mean nothing to a soldier who is threatened by deadly force. He needs and deserves a specific, concrete guide for action and plenty of good training to go with it.'*<sup>2</sup>

*'The Rules of Engagement had to be known intimately by everyone, yet in their full form they stretched to several pages of complicated instructions. For a soldier operating on the ground, under fire and under very great time pressure, something much shorter is required. A card was produced which encapsulated the main circumstances when fire could be returned, but even that was a little complicated.'*<sup>3</sup>

*'Damn,' I thought. 'This is it, time to apply those rules of engagement.'*<sup>4</sup>

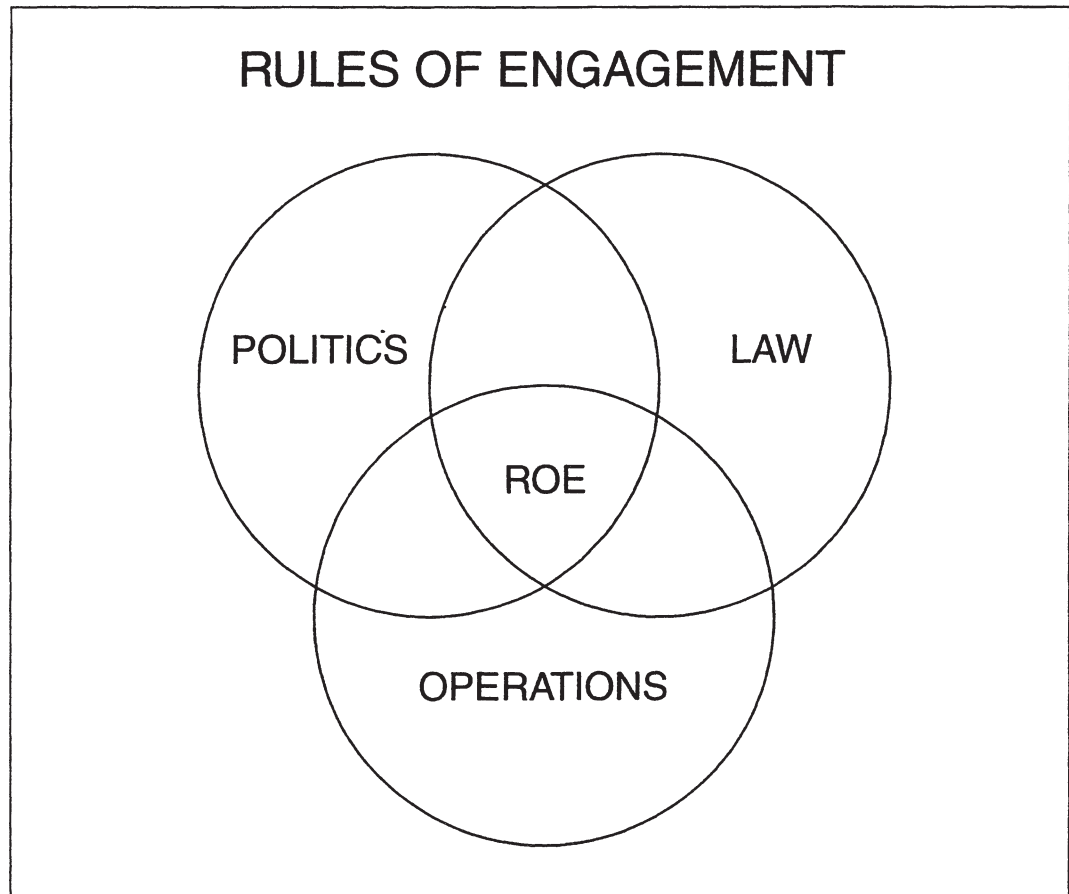
One day a UN soldier had spotted an armed patrol of one of the warring factions in a demilitarized area. He had fired warning shots with his machinegun wounding three people and seriously injuring one other. When the local authorities and the press then started asking questions to the soldier's commander, the commander answered that all actions had been taken in accordance with the Rules of Engagement (ROE) of the UN. According to him, the patrol had walked "into" the warning shots.

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The above incident raises the question of whether or not a commander of a troop-contributing nation is allowed to interpret the ROE thus and who was responsible for determining the ROE. Incidents like these can have major consequences for the execution of an entire UN operation. The violence may escalate, reprisals might be taken and there could be negative publicity resulting in the possibility of disagreement between the participating nations, their national parliaments and the press as to the correct interpretation of the ROE. Well-formulated ROE and unity of opinion about their implementation are vital to the success of an operation.

In March 1997 the department of Military Operational Sciences of the Royal Netherlands Military Academy sent out a questionnaire to members of the Royal Netherlands Army (RNLA) and Air Force (RNLAf). The purpose of this questionnaire was to try and find out how their soldiers were being trained in the use of ROE, if the ROE were clear to those people who were sent out and how they applied the ROE during

their actual deployment. Questions were asked too about changes in the ROE during operations, their cooperation with military personnel of other nations and about ROE violations. Most of the respondents recognized the tension which existed between their mission objectives on the one hand and, on the other hand, the powers and means which they had been given. These and other findings from the questionnaire will be discussed below, preceded by a more detailed definition of ROE.



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**Figure 1: ROE diagram**

Discussing ROE cannot be done without reference to their political, legal and military-operational aspects.<sup>5</sup> ROE find themselves at the centre of these aspects, which are continuously interacting, as is illustrated in Figure 1.<sup>6</sup> When discussing the political aspects involved in defining the ROE we will first briefly consider the political decision-making which forms the basis for the execution of a peacekeeping operation as well as examine the political role which ROE can play in preventing the escalation of a conflict. This will be followed by a discussion of the legal aspects of ROE as far as their international status and the consequences stemming from their violation are concerned. Finally, the influence of the military-operational aspect on the establishment and changing of ROE will be dealt with using the experiences of Dutch UNPROFOR and IFOR military personnel.

ROE discussion will be followed by a description of the experiences of Dutch Army and Air Force personnel with the Rules of Engagement in the UNPROFOR and IFOR periods. We will discuss the way they were familiarized with and trained in the use of ROE and how this was developed during the execution of these operations. We will also examine if Dutch personnel thought the ROE were formulated clearly enough and what Dutch army personnel thought of the way the ROE were used by soldiers of other nationalities. If necessary, we have distinguished between UNPROFOR and IFOR personnel. This will be followed by a description of the experiences of Dutch air force personnel and how they dealt with ROE training, changes, clarity and international cooperation. Army and air force experiences will then be compared after which the article will end with a number of points of interest.

### **ROE Definition**

Rules of Engagement were first used by the Americans during the Korean War and they were further developed during their years in Vietnam, though restrictions on the use of force had, of course, been around long before that.<sup>7</sup> The UN uses the term Rules of Engagement during peace operations to denote which circumstances allow for the use of violence. The Netherlands Armed Forces, which have frequently participated in international missions, were therefore confronted regularly with the notion of ROE and its application.

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During IFOR, the concept of ROE was defined as follows: 'ROE are the means by which NATO provides direction to commanders at all levels governing the use of force.'<sup>8</sup>

### **The Political Aspect**

Before and during peacekeeping operations, politics is involved at different levels in the drafting and interpretation of the mandate of an operation. Decisions to deploy peacekeeping forces and about the use of force are taken via diplomatic consultations between the warring factions, national governments willing to provide troops and international organizations. ROE, then, result from communications between the political leadership, lawyers and military personnel. ROE's primary purpose is to indicate when the military has the right to use force. Secondary motives for its existence are the following:

- To prevent incidents from happening or conflicts from escalating, also with regard to the safety of own personnel and that of civil humanitarian organizations;
- To avoid a disadvantageous influence of the military operation on the negotiations taking place during the peace process;
- To preclude as many civilian casualties as possible because of the

prerequisite political and social basis of the operation and the presence of the media.

Apart from the military activities during UNPROFOR and IFOR, EU or UN supervised negotiations were continually taking place between the parties involved in the conflict. It was of the utmost importance during these negotiations that all parties were able to trust each other and that peacekeeping forces and negotiators could keep on doing their job. The ROE therefore needed to be drafted in such a fashion that military operations could not impede the “higher level” political programme. Avoiding incidents during peacekeeping operations is extremely important as regards maintaining the cooperation and trust of parties involved. A lasting solution to a conflict is not reached by military means but flows from all parties’ will to reach a solution.

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In addition it is important to have a political and social basis for a peacekeeping operation when formulating the ROE: a basis which is shaped in part on the national political level by the support given by the national population to its government’s decisions. In the Netherlands the most important roles in this are played by the Dutch House of Commons and the media. How will the population, the media and the House of Commons react to worsening situations or casualties amongst Dutch military personnel? Will they demand a robust response requiring ROE which allow for an increased and speedier use of force, or will they want Dutch personnel to adopt a more reserved attitude and thus have this taken into account when the ROE are drafted?

Furthermore, there needs to be a political basis within the international community to be able to execute a peacekeeping operation. This also requires agreement amongst the troop-contributing nations about the extent of the violence permitted. For UNPROFOR this agreement was worded in the Secretary General’s report after Resolution 721.<sup>9</sup> This resolution stated that armed UNPROFOR personnel is instructed to use force ‘to the minimum extent necessary’ and ‘in self-defence’ only. The Force Commander then used these wordings literally when drafting the ROE for UNPROFOR. The way the notion of self-defence is interpreted consequently becomes of great importance in determining when UN military personnel are allowed to use force. The fact that the ROE permitted the use of force when UNPROFOR soldiers were being violently prevented from executing their job and that they permitted the use of force in the event of (para)military incursions in UN protected areas, led to uncertainty as regards the definition of self-defence. In the end it was decided to widen the definition. The ROE of 27 November 1994 now included, in the definition of self-defence, the right to defend, from direct attacks, people who were being protected by UNPROFOR.<sup>10</sup> This gave UNPROFOR military personnel more



powers to act without the need to adapt their Security Council mandate. UNPROFOR actions vis-à-vis Srebrenica make clear though that the military neither can nor always may use those powers. Despite the existence of a mandate and ROE allowing the protection of the enclave, and the availability of air support, it was still decided not to defend Srebrenica. Politics, on the national and international level, played a major part in this decision.<sup>11</sup> And, apart from the ROE, there was also the instruction from General Janvier, commander in chief of all UN forces in Croatia and Bosnia, that the lives of UN personnel were more important than the implementation of the mandate.<sup>12</sup> Such an instruction from the Force Commander can sometimes facilitate the interpretation of the ROE, but it can, if the instruction is not formulated clearly or promulgated widely enough, lead to differences in interpretation by the troop-contributing nations.

Contrary to UNPROFOR, the IFOR mandate gave military personnel the right to use force during the execution of all their tasks. In the transition period from IFOR to SFOR (Stabilization Force) the question did surface though, yet again, whether or not military personnel present in Bosnia-Herzegovina should participate in the search and subsequent arrest of war criminals. This political question had already been posed during IFOR and had a direct bearing on the contents of the ROE. It was finally decided that SFOR Rules of Engagement must permit military personnel to arrest persons suspected of committing war crimes should they encounter such persons during the execution of their duties and circumstances permitting. This means that there is still no policy as far as the active search for war criminals by SFOR troops is concerned.<sup>13</sup>

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### **The Legal Aspect**

ROE involve several different legal aspects springing from both national as well as international laws, the more important being the law of armed conflict, which consists of a collection of international treaties like the Hague Peace Treaties and the 1949 Treaty of Geneva and its 1977 additional protocols. Despite the fact that these treaties were not written for peacekeeping operations and even state explicitly that they only apply to the parties involved in a conflict, they are taken into account when ROE are being drafted. The provisions in the ROE for the operations in Bosnia-Herzegovina with regard to the arrest and treatment of prisoners, collateral damage, the protection of the civilian population and the consideration for certain objects such as religious buildings stem directly from the law of armed conflict. This law, however, applies only to the parties involved in the conflict and not to a peacekeeping unit because it is, of course, not party to the conflict. UN units must, in principle, though, adhere to the provisions set forth in the law of armed conflict.<sup>14</sup> During the UNPROFOR period, captu-

red UN military and civilian personnel have always been considered as hostages by the international community and not as criminals or prisoners of war. If a UN unit were to be denoted as a party in the conflict, the taking of UN prisoners of war would be allowed, whereas a UN peacekeeping unit is supposed to be neutral. The general treaties for the protection of human rights, contrary to the law of armed conflict, do apply.<sup>15</sup> That means that members of a UN peacekeeping force do have some legal protection. This protection has, furthermore, been increased by the recently drafted UN Treaty for the Safety of UN and Associated Personnel.<sup>16</sup> This treaty, however, does not apply in case of peace-enforcement missions as mentioned in chapter VII of the Charter of the United Nations. If or when a UN unit becomes a de facto warring faction, the law of armed conflict will apply to the fighting.

The general principles for the use of violence, being those of subsidiarity and proportionality, must also be taken into account when acting according to the ROE. These two principles therefore have an important role when ROE are drafted and applied.

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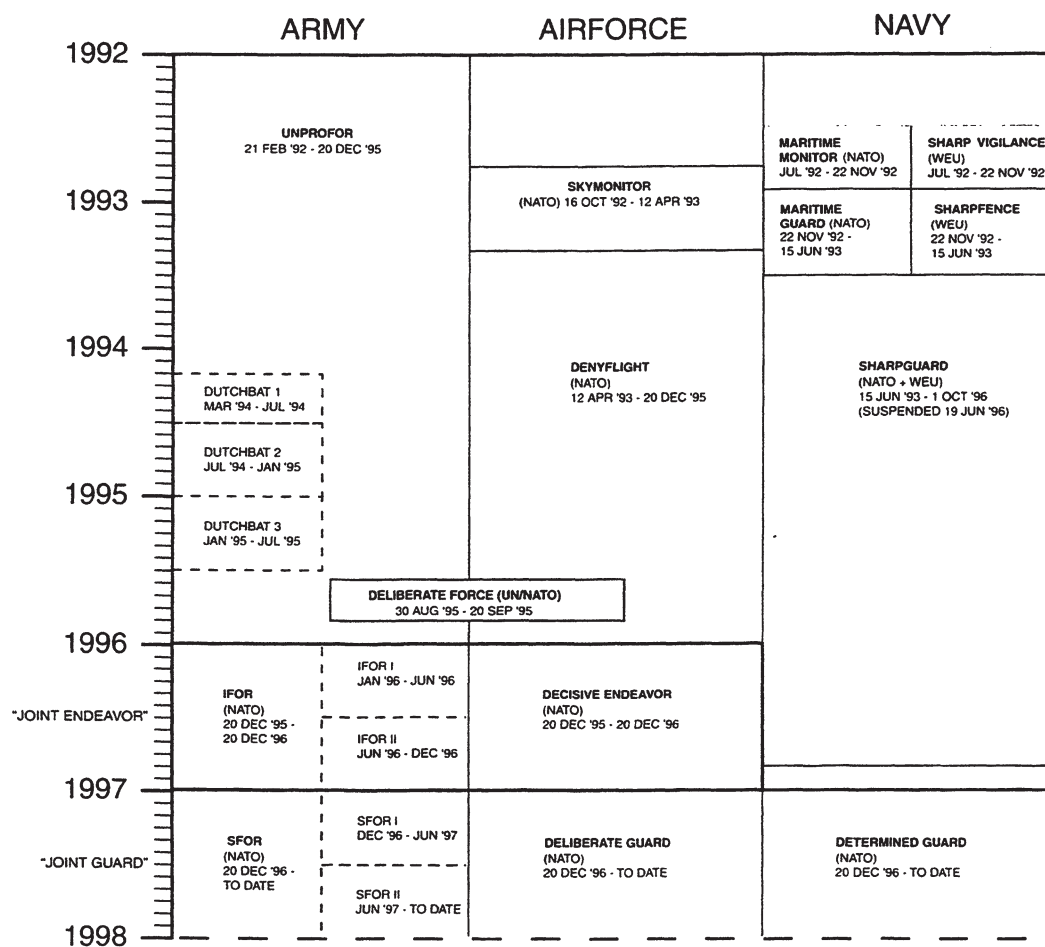
The first principle, that of subsidiarity, means that, if possible, the objective must be reached by first trying other, less harmful methods instead of immediately resorting to violence. The Rules of Engagement of both UNPROFOR and IFOR described how this should be done in practice. At the beginning of the operation in Bosnia-Herzegovina the UNPROFOR ROE stated that UN personnel was to withdraw instead of seeking a confrontation and that they were to respond to hostile actions or intent only if there was no other way. At a later stage of UNPROFOR and during IFOR only the warning procedure was in force: first give a spoken warning, then load weapons and, finally, fire warning shots. If these were to be ineffective, military personnel was authorized to take aim. This procedure, however, was not compulsory in case of self-defence when the use of immediate force becomes a necessity.

The second principle, that of proportionality, says that if it is not possible to reach an objective by other means than that of using force, this force must be proportional to the enemy action against which it is being used. The ROE for UNPROFOR and IFOR show this in the articles which state that the appropriate amount of violence must always be used.

It is evident that, because of the legal aspects of ROE, lawyers can have an important say in them. They will, first of all, have to check whether or not the ROE are in violation of national and international laws and, secondly, they will have to determine what the legal consequences might be when the ROE are acted upon or against.

## Experiences of Dutch Army and Air Force Military Personnel during UNPROFOR and IFOR<sup>17</sup>

In the survey we conducted in March 1997 we tried to answer the question whether or not the ROE were usable in practice. A number of Dutch army and air force military personnel was asked to fill in a questionnaire containing twelve open questions. These questions concerned their experiences with ROE during their preparations for being sent out as well as during their actual deployment in the former Yugoslavia.



**Figure 2: Overview of UN missions as regards the former Yugoslavia**

Our survey was limited to the experiences of five different RNLA battalions and 10 RNLA F personnel. The battalion commanders of Dutchbat-I, II and III, and IFOR-I and II were asked to send a questionnaire to two of their former company, platoon and group commanders and to ask them to return the completed forms to the Department of Military Operational Sciences. Out of 35 people, 21 cooperated. In the RNLA F, two detachment commanders were asked to send questionnaires to one former Operations Officer and two pilots. In total, 10 RNLA F personnel returned a completed form. Of the ten, seven had

been sent out to a base in Italy at least twice between October 1993 and April 1997. Questionnaires were also sent to three lawyers - two RNLA lawyers and one RNLAF lawyer. All three of them participated.

### **The Experiences of the Royal Netherlands Army with the Rules of Engagement**

#### **PREPARATIONS FOR USING THE ROE**

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The survey showed that it is of the utmost importance to be thoroughly familiarized with and trained in the use of ROE before being sent out. In practice, though, this does not always seem to be possible. Because, for example, the ROE are not always available in time. This is caused by the short period of preparation available before a peacekeeping operation starts, which also leaves little time to exercise with the ROE for that particular operation. Dutchbat-I was deployed when the UNPROFOR operation was already in full swing and it was therefore able to prepare using the ROE from the Dutch signal and transport battalions which were already in the former Yugoslavia at that time. IFOR-I, however, was forced to use the UNPROFOR ROE during its preparatory exercises because IFOR's ROE were not yet available. It was not possible to finalise the IFOR ROE until after the Dayton Peace Agreement had been signed on 14 December 1995. And although the new ROE were the same as the old ones, the nature of the operation had changed. Reactions to certain situations are co-determined by the objectives of an operation and the available means and the latter probable also influence the way in which a unit is approached by the warring factions. This should be taken into account during ROE familiarization and training.

The survey also showed that the time spent by units on ROE theory lessons differed. Lessons lasted from 20 minutes to a few hours. In addition, the survey made clear that battalions spent a lot of time on exercising the use of ROE in practice. The exact amount of time is difficult to ascertain, however, because the ROE formed an integral part of the exercises. A number of company exercises and one battalion exercise contained several scenarios based on the experiences of personnel that had served in the former Yugoslavia. All exercises were evaluated afterwards.

As far as training is concerned, the RNLA Department for Lessons Learned observed that units were often not fully manned until shortly before being sent out. This late formation of complete units implied that units had hardly had a chance to practise at team level. Because of the armed forces' restructuring programme, units were being sent out that had only just been formed.<sup>18</sup> The survey showed that there was great emphasis on exercise situations in which soldiers had to apply the ROE individually. We conclude from this that little attention



has probably been paid to practising the ROE in larger formations and with supporting units.

#### **THE DEVELOPMENT OF ROE IN THE FORMER YUGOSLAVIA**

In conflicts without clear frontlines and in which civilians were involved, the UN has often faced a dilemma: how to use more force without becoming a party to the conflict? On the basis of their experiences in the Sixties during the UN operation in Congo, where they had employed their usual doctrine of reactive violence only, the UN started the implementation of a new doctrine<sup>19</sup> which would be included in the mandates of all peacekeeping operations from then on. Whereas the official policy remained that violence was to be used only in case of self-defence, intervention troops were given additional jobs. These jobs included assisting governments in restoring and keeping public safety and security. This required a very broad interpretation of the mandate. Secretary General Hammarskjöld once described this type of action as lying 'on the outer margin of the mandate of the United Nations.'<sup>20</sup> But despite the broadening of the notion of self-defence in the ROE, as occurred in the case of UNPROFOR on the 27 November 1994 allowing the defence of all persons under its protection,<sup>21</sup> commanders observed cautiousness in using their greater powers.

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During IFOR, the Supreme Allied Commander Europe (SACEUR) promulgated an important addition to the instructions on the use of force. In the run-up to the elections of 14 September 1996, there was a chance that local factions would engage in hostilities. And neither the Aide-Memoire to IFOR commanders nor the soldier's card offered IFOR a way to respond to hostilities of this nature. That is why SACEUR decided to use his authority<sup>22</sup> and permit the usage of force to prevent serious crimes from happening. By means of an additional clarification of the ROE he allowed the use of force against anyone committing a (potentially) life-threatening act or one which would probably incur serious bodily harm, irrespective of whom these acts were being inflicted upon.

This change in the ROE was not implemented literally by all the different national contingents. Canada, Great-Britain and the Netherlands all promulgated their own versions taking into account their national legislation. The Dutch version was established as follows: the Ministry of Defence drafted the English-language variant, after which the RNLA lawyer working with the Dutch contingent made a draft translation. This translation was then discussed with the battalion commander followed by discussions with the Legal Affairs Department of the Commander in Chief of the RNLA. The definitive version was consequently accepted by the Dutch Contingent Commander and promulgated on 7 September 1996 by means of a supplement to the Aide-Memoire and the instructions for the use of force.

The text of the supplement was to be in effect until further notice during the election period. Its provisions were never revoked however. They have now been included in the new Aide-Memoire for SFOR commanders and the SFOR soldier's card. This means that SFOR personnel now also has the possibility to intervene when Bosnians are about to inflict grievous bodily harm on each other.

#### **ROE CLARITY AND APPLICABILITY**

Almost all respondents thought the ROE they had been given were clear as far as individual action was concerned. It is impossible, however, to foresee and practise all possible scenarios during exercises. The individual soldier is therefore required to sometimes determine in a very short period of time whether or not a certain situation justifies the use of force. The survey showed that this requirement led to feelings of insecurity amongst military personnel. More time should therefore be devoted during ROE training to dealing with such insecurity on the individual level.

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Those soldiers that had been sent out for UNPROFOR differed in their opinion as to the question if the ROE had impeded the execution of their job. This might have been caused by the fact that they were not sure about their mission objective. One of the interviewees wrote: 'ROE should be a more elaborate definition of the assignment given in order to reach a certain objective. But Bosnia-Herzegovina Command had not promulgated a clear mission, let alone provide me with an objective for my area of responsibility. (...) In short: the ROE were detailed enough, but I had no clear orders.' Over time, the UN mandate had, furthermore, been changed continually and had become vague because of the many resolutions.

The change in the definition of self-defence, mentioned above, also contributed to the vagueness. The change should have enabled the individual soldier to act more robustly, if necessary. Our respondents, however, state that they were instructed to use their authority restrictively. As a result some of them felt they had not been given enough powers.

Nevertheless, there were sound operational reasons during the UNPROFOR period to be reluctant in the use of force. Local commanders were often unsure of their military superiority which meant that the use of force might lead to an escalation. And neither the Security Council nor the national governments wanted the UN troops to become party to the conflict. Besides, there was a chance that the party against which force was being employed would no longer participate in the peace process or that it would retaliate.

Other objections were voiced on the political level. Justifying the use of

force by invoking the right of self-defence could be detrimental to the UN's image of impartiality which, in turn, would diminish the support for the operation at home. The rash use of force can, moreover, lead to more casualties which might cause the disappearance of the political support for the operation in the troop-contributing countries.<sup>23</sup>

In practice, however, the UN lost its credibility because of the fact that UN troops did not exercise their right to use force in situations where they did have the authority to do so. The increasing number of UN hostages that were being taken by the warring factions testified to this and led to a feeling of powerlessness amongst UN personnel and to feelings of indignation in the troop-contributing nations.

When a force does not have escalation dominance, troops will face dilemmas. Any use of force has the inherent danger that military personnel is later accused of excessively using it. When they do not intervene, there is a risk that they are accused of being hesitant. And then there is the fact that usually there is little time for deliberations before deciding to use force. Most of the time the rightness of an action can only be determined afterwards, when its consequences are known.

The introduction of the notion of 'safe area' also caused problems. Respondents felt that they had insufficient means and authority to be able to guarantee the safety of such an area. It was the first time the Security Council authorized the Secretary General explicitly to use violence for the protection of civilians. The Under-Secretary of the UN warned that it was a 'highly unwise' decision. In 1996 he wrote an article in which he stated that the UN Secretariat was convinced that it was a 'mission impossible.'<sup>24</sup> During the Gorazde crisis, Dutchbat started raising questions about the ROE. Battalion guidelines did not exist. In a book containing his personal experiences, a former company commander wrote: 'We tried to imagine how matters could get out of hand in Srebrenica as well. Dutchbat had already asked Bosnia-Herzegovina Command how they were to respond to a direct attack on the enclave by the Bosnian-Serbs. Were we to regard this enclave as a "safe area" per definition and thus defend the area? Or were we to stand by and to take up arms only when directly threatened by the Bosnian-Serbs? Until then we had not received a very clear answer. It sometimes seemed as if the notion of 'safe area' only existed in the media!'<sup>25</sup>

IFOR had a clearer mission. Its objective was described in the ROE: the implementation of the Dayton Peace Agreement. The interviewees say they had sufficient powers to execute their tasks, especially after the additional clarification, see above, had been issued on 7 September 1996. Instead, we believe, it might have been considered to authorize the use of so-called non-lethal weapons, for example teargas,

water-cannons, rubber bullets, when assisting the local police, especially when taking into account the objective of the clarification (preventing irregularities from happening amongst the population during the elections) and the principle of proportionality. IFOR's ROE did allow the authorization of the use of such weapons.<sup>26</sup> The Dutch contingent, however, did not have riot control means and had not been trained in the use of non-lethal weapons. In the Netherlands the use of these weapons is primarily a policeman's job. There was a British unit present though which had this equipment and which had been specially trained in its use in Northern Ireland.

During IFOR there was discussion about the interpretation of certain ROE definitions as well. Such interpretive problems cannot always be solved at the level of a troop-contributing nation. Should new, unforeseen situations occur in practice, adaptation or amplification of the ROE has to be requested via the chain of command. If necessary, the political leadership is involved in this process as well.<sup>27</sup>

62 One of the respondents remarked the following: 'The Rules gave us so much freedom that totally different decisions during the same incident were in agreement with the Rules simply because they had been formulated so vaguely.' The quote illustrates a common misunderstanding vis-à-vis the ROE. They do state the powers which a soldier has, but they never oblige him to actually use those powers. Sent out military personnel, when executing their assigned tasks, has a certain amount of freedom in choosing which means they are going to use in order to reach their objectives. That implies that comparable situations do not always require the exact same response. Operational or political circumstances may inhibit the use of force for example.

During IFOR it became apparent that, compared to UNPROFOR, the ROE were better suited to the mandate. And the same was true for the means given. One respondent said: 'If we had had more powers, that would not only have been in violation of the Dayton Peace Agreement, but it would also have made our job much more difficult, because people would have expected us to use those powers.'

Having ROE containing more powers, therefore, does not guarantee a more robust performance in practice. Objective and military operational circumstances play an important part as well.

#### **ROE APPLICATION**

Dutchbat was operating in a very unstable period and had insufficient means to respond effectively in case of escalating violence. These circumstances forced the battalion to think twice before using force. Most force, however, was used during UNPROFOR, the majority being shooting incidents. IFOR, on the contrary, has hardly had to apply



force. Threatening to employ IFOR's considerably heavier arms was usually enough to calm things down.

Respondents report only a few ROE violations. A Dutch soldier, for example, had constructed a boobytrap by placing a handgrenade connected to a trip wire in a cola can and used it as a security measure. This was in violation of the ROE. The use of such a means for guard duties does not comply with the principle which states that force must be applied 'to minimum extent necessary'. The soldier was convicted under military law. His appeal has not yet been heard. Another example was a Danish driver who carried a loaded weapon and who displayed rather aggressive behaviour, thereby endangering himself and his colleagues. After two months he was sent home by his contingent commander.

The precise number of ROE violations is not known. But it is the commander's duty to see to it that the ROE are observed. That this was not always possible in practice is shown by an interviewee who remarked that 'circumstances allowed no-one to always see whether or not the battalion was observing the rules.'

Another respondent wrote: 'Sometimes the battalion consciously took action where the use of force was and could be allowed, all monitored by company commanders.' This raises the question if the ROE indeed allowed such use of force. The so-called Vrbanja bridge incident<sup>28</sup> - no Dutch personnel was involved - is an example of a situation where ROE interpretation was stretched to its limits. The UN had declared this a neutral bridge but it had to be reconquered by a French company after it had been forcibly taken by the Serbs, killing several French and Serb soldiers. The French justified their actions by appealing to the right to use force in order to defend themselves during the execution of their job and considered the action to have been in compliance with the ROE. One can only wonder if Dutch military personnel would have acted in the very same way. In such situations a commander must decide between the importance of reconquering the bridge and the chances of soldiers losing their lives.

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#### **COOPERATION WITH OTHER NATIONALITIES**

In our questionnaire we also asked if, when cooperating with soldiers from other nations, there were noticeable differences in interpretation when the ROE were being applied. Those parts of Dutchbat-I, II and III which were stationed at Srebrenica did not cooperate frequently with other nationalities because these were hardly present in the Srebrenica enclave. Outside the enclave, cooperation, as far as ROE are concerned, was also limited. Dutchbat personnel did say that they noticed differences as regards previous units stationed in their sector and units stationed in adjacent sectors. Dutchbat, for example, suffered the ill effects of actions taken by Nordicbat in the Tuzla sector. During a

shooting incident two Danish Leopard tank platoons fired 72 grenades at a Bosnian-Serb position after which the Serbs blocked the shortest supply route to Srebrenica. On the one hand some Dutch soldiers responded to questions in our survey by stating that they sometimes did not understand why more forceful actions were not taken, whereas, on the other hand, they also remark that they considered the consequences of these actions as highly unwanted. The Nordicbat action was taken within ROE parameters but its inadvertent side-effects, we believe, were the result of the fact that UNPROFOR did not have escalation dominance.

The respondents also remarked that differences in ROE interpretation were a result of the different backgrounds of the participants in the international operation, especially when it concerned non-NATO partners. This might have something to do with their limited knowledge of the English language or a short period of ROE training and familiarization. Differences in interpretation also occurred because national laws hindered the complete implementation of the ROE. One interviewee reported that he had heard complaints from soldiers from different nationalities about the lack of coordination by the UN.

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During IFOR the Dutch military personnel was placed under British command. Opinion about the British performance differs. Some respondents thought the British used more restrictive ROE. Others said that the British interpretation did not deviate, but that they acted reservedly or they had not noticed any differences between the Dutch and British units as far as their performance and ROE interpretation was concerned.

In implementing the additional clarification to the ROE the British showed to be more restrictive. In the past they have been reprimanded by the British courts when excessive violence was used. The Clegg case is a good example of this.<sup>29</sup> Clegg was a British soldier who, according to the judge, had used too much unnecessary force during an action in Northern Ireland. In the Netherlands, under comparable circumstances, he would probably have been acquitted on grounds of self-defence.<sup>30</sup> There are several possible explanations for the more restrictive British rules. On the one hand they could stem from the fact that the British have more military experience, but, on the other hand, they could indeed be more cautious as far as the use of force is concerned, or their strict rules might be a response to too robust actions in general of British military personnel. Our survey did not provide us with a definitive explanation for this matter.

## **Experiences of the Royal Netherlands Air Force with the ROE**

### **PREPARATIONS FOR WORKING WITH THE ROE**

The Royal Netherlands Air Force uses ROE, as is customary within NATO, during its regular exercises. For air operations these ROE are amplified with Special Instructions (SPINS) which contain the specifics for the execution of a particular mission.

The survey showed that the Air Force pays a lot of attention to ROE familiarization and training during peacetime and exercise situations. During their preparations for their mission in Italy, Air Force personnel was briefed on the ROE and SPINS that were in operation at that time after which the pilots took time to study them personally. Using the most recent ROE, training flights in the Netherlands were utilized to go through a number of scenarios. After arriving in Italy, personnel was briefed once more by the detachment they were relieving. And, now and again, there were ROE briefings by a delegation from the Combined Air Operational Center (CAOC) in Vicenza.

Despite this intensive training the Dutch Auditor General concluded that the RNLAF had prepared and planned a special training programme for the former Yugoslavia but that it had not been executed due to a lack of time.<sup>31</sup>

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### **ROE CHANGES**

Respondents told us the ROE hardly changed during their stays. The SPINS, though, were changed regularly. Usually these changes did not concern the use of force but changes in airspace structure. This meant that the status of certain areas was altered, changing for example the minimum flight level. One respondent remarked that after an American F-16 had been shot down on 2 June 1995 the CAOC determined that the illumination of a NATO aircraft by a fire control radar was to be considered as hostile intent in which case the ROE allowed the opening of fire. In this case, because we did not possess all the relevant Air ROE, we have not been able to determine whether the ROE were changed or that the existing ROE were additionally clarified.

One of our respondents, a former detachment commander, was involved in NATO/UN talks concerning the measures to be taken after Srebrenica and Zepa had fallen. He also assisted in determining the subsequent changes in the ROE. Our other respondents said they had not been directly involved in ROE changes. Some of them did, however, say that every pilot has the right to request a ROE change through the chain of command.

### **ROE CLARITY**

The ROE that were used for operations over Bosnia did not really

deviate from the ROE used during regular exercises. One pilot said the SPINS became unclear after a while because of their size, but in general the ROE and the SPINS were considered to be very clear. Except in self-defence it was always necessary to get permission from the CAOC for the use of force. In doubtful situations direct communication about the use of force was always possible via radio.

In principle problems only occurred when split second decisions had to be taken. In those situations there was no time to contact the CAOC. Many respondents stated that there was an ongoing discussion about the interpretation of the notion of hostile intent. Apart from the fact that the illumination of an aircraft was considered to be a case of hostile intent, pilots wondered about other situations and the moments these could be seen as instances of hostile intent: was it the moment a pilot observed a hostile approach, or the moment he was within enemy firing range or the moment when he was being fired upon? In practice it was not possible to foresee each and every situation and to provide suitable answers.

66 One respondent said about the ROE: 'They are a very important instrument to protect the soldier against his own, possibly wrong interpretation of the situation. Primarily they offer guidelines in situations requiring fast and effective action. Secondly they offer protection to the soldier adhering to the ROE and who thus cannot be held accountable for the errors or gaps in them.' Though this does not mean that a soldier who is acting in accordance with the ROE will, in principle, always be exonerated. The ROE do not provide him with a carte blanche to use force.

#### **ROE APPLICATION**

As has been said before, the use of weapon systems always had to be authorized by the commander of the CAOC except when pilots needed to fire in self-defence. Pilots were in constant radio contact with the CAOC and could therefore be continuously coached by the CAOC. This reduced the number of ROE violations to a minimum. This might be the reason why none of our RNLAf respondents reported ROE violations.

During UNPROFOR, air force personnel, just as their army counterparts, were instructed to use force very reluctantly. As is shown by one of our interviewees, who said: 'During Operation Deny Flight we regularly observed violations of the resolution concerning the no-fly zone. (...) In spite of these violations we did not receive permission to use force, probably because of its political sensitivity.' Not until the end of the UNPROFOR period did this situation change, though the possibility to use force on a large scale against warring factions threatening the safe areas had existed for quite some time.<sup>32</sup> It had, however, hardly



been used. On 16 June 1995 the Security Council enabled the deployment of more UN troops<sup>33</sup> which allowed a more varied amount of weaponry to be brought to bear in support of the mandate. And, as a result of the many UN hostages and the repeated attacks and bombardments of the safe areas, operation Deliberate Force<sup>34</sup> was put into force. The political will was now present to permit more robust actions, with the mortar attack on Sarajevo market with its many casualties being the deciding factor. The extensive media coverage of this incident was also of great help in creating widespread support for a more robust NATO performance. Most UN personnel had furthermore been withdrawn from Serb-controlled territory making the UN less vulnerable to reprisals. During the operation the Dutch RNLA detachment of which half our interviewees has been part dropped 150 bombs in total on Bosnian-Serb objectives. Each time ROE application was carefully monitored. Contrary to Deny Flight, however, permission was granted in advance for the execution of an attack. Although the CAOC did have the possibility to rescind, thereby breaking off the attack.

#### **COOPERATION WITH OTHER NATIONALITIES**

During air operations above Bosnia the RNLA cooperated with NATO partners only. This made it possible to work with one English language version of the ROE which had been laid down by the CAOC. During NATO exercises it is also common practice for air forces to execute ROE training together. According to the respondents this led to good cooperation between the different countries during the operation and the nonappearance of differences in ROE interpretation.

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During the Gulf War there existed a rather large difference in the interpretation of the proportionality principle between the Americans and the British as far as the inevitability of civilian casualties was concerned.<sup>35</sup> Similar differences did not surface in our survey.

Furthermore, regular so-called player-meetings were held at CAOC where all changes to the ROE or the SPINS were discussed by the representatives of the participating countries and their pilots. Possible differences in interpretation were then discussed until a common stand had been determined.

#### **Comparison of ROE Usage by the RNLA and RNLA**

The RNLA and RNLA differ as far as organization, size, objective and means are concerned. This bears upon the way they use the ROE. Nevertheless we think they can learn from each other's experiences.

Army chain of commands are usually longer than those of the air force. In the army it is not possible to provide section and platoon commanders with a direct link to headquarters. That means that deci-

sions to use force must sometimes be taken at a low level in the organization necessitating ROE training and familiarization at all levels. During large-scale conflicts and peace-enforcing operations every soldier will probably have to employ the ROE.<sup>36</sup> We would therefore like to make a plea to start exercising the use of ROE as soon as a unit is formed and perhaps even as soon as Basic Military Training. The early introduction of ROE has the added advantage that in the event of a short period of preparation for an operation the notion of ROE and its application need not be taught.

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The RNLA, contrary to the RNLA, always exercises with ROE during its regular training periods, including the international ones. The army usually only exercises with ROE when preparing an international mission and it also exercises less frequent with foreign units than the air force does. We believe therefore that it is necessary for the RNLA to devote more attention to the cooperation with foreign and/or NATO army and air force units as far as ROE are concerned. This is not a novel idea as is shown by the RNLA Department for Lessons Learned when it made the following recommendation in its final report on IFOR: 'In the present situation (i.e. NL Mechbat under the command of a UK Division) a Dutch officer, who had studied at Camberley for example, would have been of great importance in understanding and "translating" typical British norms and values for the local Dutch commanders.'<sup>37</sup> Also, we believe it could be very beneficial to commanders who will be working together to be able to discuss the interpretation of the ROE before the start of an operation.

Another important difference between army and air force is that the air forces employed one English language version of the ROE, whereas all the different army contingents each drafted their own version of the ROE.<sup>38</sup> Most contingents therefore needed to translate the English version and that might lead to differences in ROE interpretation. The establishment of national instructions is furthermore always done by taking into account the restrictions of own national legislation. And even when military personnel is sent out for peacekeeping operations, they are still bound to obey their national laws. All this could get in the way of an effective multinational operation.

In our survey, RNLA personnel said they knew they were able to request a ROE change. Although RNLA personnel has that right too,<sup>39</sup> they did not indicate that they knew this right existed. This might indicate that they either thought this was so obvious that they did not write it down or that they had not been sufficiently informed about this possibility.

In its report called 'Leren van vredesoperaties' (Learning from Peacekeeping Operations) the Dutch Auditor General concluded the

following: 'The organization of the learning process inside the Defence Staff and the different Services was not fully up to standard. This meant there was no clear control over the use of evaluation results. There are, however, clear indications that matters are improving.'<sup>40</sup> In 1997 the RNLA started the dissemination, within its own organization, of the relevant conclusions from the debriefings of peacekeeping operations. In these debriefings, however, the ROE have not, until now, been paid any particular attention to.

### **Points of Interest**

The problems involved in dealing with the Rules of Engagement are caused by the fact that ROE are influenced by three totally different aspects: political, legal and military-operational. The political leadership, first of all, is able to indicate via the ROE what degree of violence they consider most suitable for a peace operation. From a political standpoint, the military operation is there to provide maximum support for the all-important peace process. Albeit that the commander of an operation is fairly autonomous in that he is able to give additional instructions which cannot always be discussed in advance. This is a point which, in the future, surely merits further consideration. Just as some other points of interest which we will discuss below.

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### **LEGAL ASPECTS**

When drafting the ROE for an international peacekeeping force, national legislation as well as international law must be taken into consideration. ROE possibilities are limited, however, because of the undesirableness of different contingents within one military operation working with different ROE. But the ROE still have to comply with the national legislation of the nations participating in the operation and these each have their own rules for when the use of force is allowed. ROE, furthermore, also have to comply with the international treaties which together make up the law of armed conflict.

### **RELATIONSHIP BETWEEN POLITICS AND MILITARY PERSONNEL**

The manner in which military personnel uses the ROE can play an important part in the success of a peacekeeping operation. Because the ROE are utilized on a daily basis by military personnel, the ROE have to be finely tuned to the mission objective and the often limited military capabilities. They therefore need to be drafted carefully, taking into account specific political and geographical circumstances and other intervention conditions. During UNPROFOR it became clear that the attitude of the political leadership is crucial, nationally and internationally. Several of our respondents, who had been sent out during UNPROFOR, emphasized the importance of a clear political stand. On the basis of past experiences the Dutch Foreign and Defence Secretaries established a new framework for future military UN opera-

tions in which great emphasis was placed on the feasibility of the established political goals. This framework contains the following statement on ROE: 'The Rules of Engagement (ROE) of the units being sent out must be formulated unambiguously and must, in principle, be the same for all the units (including those from other nations) taking part in the execution of the military part of the operation. During peacekeeping operations it is important that the ROE enable the effective execution of the mission even under difficult circumstances.'<sup>41</sup>

#### **RELATIONSHIP BETWEEN AUTHORITY GIVEN AND MISSION**

ROE do not put you under the obligation to use force to reach the desired objective. Besides, it would not be wise to use that authority in every situation which formally allows it. The decision to use force must depend, amongst other things, on the situation on the spot, on political factors and the means available to military personnel.

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Apart from international interests, national political interests and national legislation can also play a part in the decision-making process. A soldier that has been sent out must therefore be aware of the fact that his decision to use force could have far-reaching consequences and that his commander, even when the ROE allow it, will forbid him to act. Such restrictions, which do not flow from the ROE directly, sometimes lead to feelings of frustration among personnel when they do not fully understand why they have to be so reluctant. The same is true when they have been given inadequate means with which to undertake actions. They will then face dilemmas and this may lead to feelings of insecurity. Our survey showed that not everyone was able to cope correctly with this kind of insecurity.

#### **ROE FLEXIBILITY**

Several phases can be discerned during peacekeeping operations. These phases depend on the task that has to be executed and the threat level. Unexpected developments will always occur and sometimes the situation will be chaotic and unclear.<sup>42</sup> With too much authority for the use of force, however, you run the risk of escalating the violence, whereas too little authority may render the execution of an operation impossible. Such unclear situations could benefit from the availability of sets of ROE. ROE need to be finely tuned to an operation and fine-tuning the ROE to the different phases of a mission could for example be done by the introduction of a system of different, coloured ROE cards, as has been done by the US Army.<sup>43</sup> Depending on the situation in an area, the ROE can then be changed fairly simply.<sup>44</sup> Another way to increase ROE flexibility is to distinguish between ROE for armed and unarmed enemy troops,<sup>45</sup> though the difference might not always be clear and could lead to confusion. We would favour the first idea. Though the survey did not show that there was any need for differentiation, some operations might require a change of ROE as a result of



developments in the area of operation or the transition to a new phase in the operation. In such cases coloured cards could be a useful aid. Unexpected changes could be promulgated by means of a supplementary sheet, as happened during IFOR.

The current ROE for the former Yugoslavia allow action to be taken in case of violence between non-warring factions. In peacetime situations riot control is police business. If, however, Dutch military personnel is stationed in an area where the police is insufficiently organized or does not have enough means at their disposal, they are sometimes allowed to assist the local police or government. We think it should be determined before each operation whether or not assisting the local police is part of a unit's mission. If so, that unit must be trained for that task and be provided with the necessary equipment, such as pepper-spray or teargas, to enable them, for example, to effectively deal with riots. The use of such non-lethal weapons when assisting the police might prevent the escalation of the violence.

#### **DUTCH PUBLIC OPINION ON THE USE OF FORCE**

On the one hand public opinion in the Netherlands is in favour of the idea that Dutch soldiers should act more robustly and that they should use their permission to employ force more often, though, on the other hand, casualties during peacekeeping operation are hardly accepted.<sup>46</sup> Other countries seem to be more willing to accept casualties. With the start of operation Deliberate Force, though, what we believe to be one of the main causes for the Dutch unwillingness to use force, the fact that they did not have escalation dominance, was removed. The question remains, however, what the reaction in the Netherlands will be when, as a result of more robust actions, casualties are indeed inflicted.

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#### **MULTINATIONAL AND NATIONAL ROE COORDINATION**

Our survey has shown the importance of agreement on the use of force within a multinational force. Controlling the implementation of the ROE seems to be better possible in the air force because all pilots are in continuous contact with the CAOC. Though, in practice, there still remained, even in the air force, the need for regular discussions about the ROE. According to our respondents, there was good communication and cooperation between the different air forces. In order to make the ROE a more integral part of the army, however, we believe the RNLA should incorporate ROE training and familiarization in its Basic Military Training courses and its regular exercises instead of only doing so during its preparatory exercises for sending out. Units will then be better prepared for the use of ROE under varying circumstances even when they are formed at the last moment or when the ROE are not directly available.

## CLOSE

Rules of Engagement deserve the constant attention of military personnel and its political leadership. Paying attention to the rules for the use of force is a constant necessity, during exercise situations as well as during the actual deployment. The realization that ROE require continuous training and explanation should permeate each of the three Services. And perhaps this should be so not just during joint but during combined operations as well. The answers that were given in response to our questions make clear that our respondents were well aware of the importance of the ROE, but that sometimes those ROE were seen as unclear and in need of further explication. These reactions therefore yet again underline the significance of proper ROE training but they also emphasize the importance of good evaluations and additional training during the execution of an operation. We hope this article will contribute to ensuring that the knowledge and experiences which have been gained during UNPROFOR and IFOR as far as the ROE are concerned will not be lost as well as that it will make a valuable contribution to encouraging the consistent and continuous attention the Rules of Engagement require and deserve.

## Notes

1. This article is based on two articles of the Department of Military Operational Sciences of which one was published in the *Militaire Spectator* 166, 1997 (3), pp. 124-130
2. Clarence E. Briggs III, *Operation Just Cause, Panama December 1989, A Soldier's Eyewitness Account*, 1990, p. 142
3. Col. Bob Stewart, *Broken Lives*, 1993, p. 321
4. Cf. Clarence E. Briggs III, p. 35
5. For this article we used research material collected by our former department member, Lieutenant-Colonel Swillens, and C.P.J. Capelle, a former trainee. The results of their research can be found in 'Rules of Engagement: Ins and Outs,' Unpublished, RNLMA Breda, 1996.
6. The diagram is based on an article by J.A. Roach published in the *Naval War College Review*, 1983, pp. 46-55
7. Cf. Major M.S. Martins, *Military Law Review* 143 (Winter 1994), p. 36
8. Annex E (Rules of Engagement) to SACEUR OPLAN 10405 (Joint Endeavor) final.
9. Cf. Annex III par. 4
10. Cf. too A.S. Paphiti, *Militair Rechtelijk Tijdschrift* 89 (1996) (1), p.12
11. For a critical analysis of the role of the Dutch Ministry of Defence and that of General Janvier during the fall of the Srebrenica enclave cf. D. Rohde, *Endgame: the Betrayal and Fall of Srebrenica*, 1997
12. For a more elaborate version cf. L. Ornstein's article in the Dutch periodical *Vrij Nederland*, 13 July 1996, pp. 7-9 or cf. Rohde p.28

13. Just before the NL ARMS deadline of September 1997 it became clear that SFOR has started to take a more active approach when they arrested Milan Kovacevic and tried to arrest Simo Drjaca who died during the attempt (cf. *Volkskrant* 11 July 1997, *NRC Handelsblad* 10 July 1997).
14. Cf. for example the Convention on the Privileges and Immunities of the United Nations (13 February 1946) and the 'Guidelines for UN Forces Regarding Respect for International Humanitarian Law' (May 1996)
15. Cf. the Universal Declaration of Human Rights (1969, 99) and the European Treaty for the Protection of Human Rights and Fundamental Freedoms (1951, 154)
16. Cf. H.G. van de Wilt, *Militair Rechtelijk Tijdschrift* 89 (1996) (8), p. 261
17. This article discusses the UNPROFOR-IFOR period (Feb 1994 - Dec 1996). Several operations were executed during this period. See Figure 2 for an overview of the period and the units involved in all UN missions.
18. Deputy Chief of Operations, Department for Lessons Learned RNLA, *IFOR, Resultaten Debriefing*, Den Haag, Maart 1997, conclusion 4a-d
19. First included in the 1964 Aide Memoire for UNFICYP.
20. M. Goulding, 'The Use of Force by the United Nations,' *International Peacekeeping*, Vol. 3, No. 1, Spring 1996, p. 8
21. Force Commander's Policy Directive Number 13, Annex A, p. A-1, 27 November 1994, added: 'and those for whom one has a responsibility to protect.'
22. Authority derived from the following ROE: Annex E (Rules of Engagement) to SACEUR OPLAN 10405 (Joint Endeavor), final, 16 December 1995, Appendix 1, p. E-1-2: L12, p. E-9: AE, p. E-1-5: 3h
23. M. Goulding, p. 9
24. Ibid. p.11
25. Cap. E. Jellema, *First In. De ervaringen van de commandant Bravo-compagnie Dutchbat-1 in Srebrenica*, SDU, 1996, p. 136
26. Annex E (Rules of Engagement) to SACEUR OPLAN 10405 (Joint Endeavor), final, 16 December 1995, Appendix 1, p. E-1-2: L19: 'The use of riot control means against non-belligerents in circumstances deemed appropriate by an Authorised Commander is permitted.'
27. Cf. too A.S. Paphiti, 'Rules of Engagement within Multinational Lans Operations,' *Militair Rechtelijk Tijdschrift* 89 (1996) (1), p. 12
28. *Trouw*, 29 May 1995
29. N. Jörg, 'De zaak Clegg: noodweer/self-defence en de Rules of Engagement,' *Militair Rechtelijk Tijdschrift* 89 (1996) (2), p. 50
30. Dutch Penal Code, article 41, sub-section 2
31. General Auditor, 'Leren van vredesoperaties,' Tweede Kamer, vergaderjaar 1995-1996, 24 605, Nos 1-2, p. 15
32. UN Security Council, Resolution 836, 1993
33. UN Security Council, Resolution 998, 1995
34. See Figure 2

35. Cf. Paphiti, p. 2
36. In the Gulf War too, ROE were used. Tab H of the US Army's Operational Law Handbook (1993) distinguishes between peacetime and wartime ROE.
37. Deputy Chief of Operations, Department for Lessons Learned RNLA, *IFOR, Resultaten Debriefing*, Den Haag, Maart 1997, Bijlage A, paragraph 40
38. Cf. note 11
39. Annex E (Rules of Engagement) to SACEUR OPLAN 10405 (Joint Endeavor), final, 16 December 1995, p. E-4: 3f: 'Any limitation or restriction considered to threaten the safety of the force and/or successful conduct of the mission should be addressed immediately upon discovery and reported up the chain of command. Commanders will request ROE revision as appropriate.' This condition applied to all the Services.
40. Final conclusion by the Dutch Auditor General in his report *Leren van vredesoperaties*, p. 18
41. Tweede Kamer, vergaderjaar 1994-1995, 23 591, no. 5, p. 12
42. Vogelaar et al. contains a detailed discussion of the unclear and ambiguous situation in which Dutch military personnel found itself during UNPROFOR. Cf. Vogelaar et al., *Leiderschap in crisissomstandigheden. Het functioneren van pelotons- en groepscommandanten in UNPROFOR*, SDU 1997, p. 167
43. US Army Operational Law Handbook, p. H-99
44. Cf. Paphiti, p. 11
45. C.L. Grotzky, 'The Impact of Standing Rules of Engagement (SROE) on Peace Enforcement Operations,' paper submitted to the Naval War College, Newport, p. 14
46. Cf. too *Kernvraag* 1997 (2), No. 112 which contains an interview with former Dutch Defence Secretary Relus ter Beek on this matter.