

Marten Zwanenburg, *Accountability of Peace Support Operations*. Leiden and Boston: Martinus Nijhoff Publishers, 2005. Pp. xii + 364. €100. ISBN 90-04-14350-5.

Geert-Jan Alexander Knoops, *The Prosecution and Defense of Peacekeepers under International Criminal Law*. Ardsley, NY: Transnational Publishers, 2004. Pp. xlviii + 368. \$125. ISBN 1-57105-154-6.

The rise in the number of multinational peacekeeping operations undertaken by international organizations since the end of the Cold War has in recent years sparked considerable interest, both in the academic literature and elsewhere,<sup>1</sup> in the accountability of such operations. The two books reviewed here address two different aspects of this question. *Accountability of Peace Support Operations* by Marten Zwanenburg, a legal advisor at the Netherlands Ministry of Defence, examines the scope and content of the responsibility of states and international organizations for violations of international humanitarian law in the context of peace support operations, particularly missions under the command and control of the UN and NATO. *The Prosecution and Defense of Peacekeepers under International Criminal Law* by Geert-Jan Alexander Knoops, a professor of international criminal law at the University of Utrecht, aims to assess the different aspects of the criminal liability of peacekeepers under international criminal law, especially their prosecution before international and internationalized criminal courts.

Peace support operations led by international organizations are composed of national

contingents assigned by states to the organization for the purposes and duration of the mission. The legal nature of such multinational forces has troubled international lawyers for some time now.<sup>2</sup> Being at the same time organs of their sending states as well as (subsidiary) organs of the international organization they are assigned to, the acts of national contingents comprising a multinational force may be imputed to their sending states and to the organization controlling them, or indeed to both. To determine which entity bears responsibility for breaches of international humanitarian law in these circumstances, Zwanenburg sets out to answer three questions in *Accountability of Peace Support Operations*. What are the relevant rules and principles of international law governing the attribution of the conduct of peace support operations? To what extent does international humanitarian law apply to states and international organizations taking part in such operations? Who is entitled to invoke responsibility for violations of international humanitarian law by peace support operations, and what mechanisms are available to this end?

It is widely recognized that international organizations are responsible for internationally wrongful acts imputable to them, yet the norms governing their responsibility are not clearly defined. Most commentators agree that the rules regarding the attribution of conduct to states can be applied to them by analogy. Thus, international organizations are responsible for the acts of their organs much in the same way as states are. However, as Zwanenburg explains, the analogy leaves a number of questions unanswered, in particular whether the responsibility of an international

<sup>1</sup> E.g. K Schmalenbach, *Die Haftung Internationaler Organisationen im Rahmen von Militäreinsätzen und Territorialverwaltungen* (2004); UN Sub-Commission on the Promotion and Protection of Human Rights, 'Working paper on the accountability of international personnel taking part in peace support operations', UN Doc E/CN.4/Sub.2/2005/42, 7 July 2005.

<sup>2</sup> See D. W. Bowett, *United Nations Forces: A Legal Study of United Nations Practice* (1964); M. Bothe, *Streitkräfte internationaler Organisationen: Zugleich ein Beitrag zu völkerrechtlichen Grundfragen der Anwesenheit fremder Truppen* (1968); R. C. R. Siekmann, *National Contingents in United Nations Peace-Keeping Forces* (1991); as well as D. Fleck (ed.), *The Handbook of the Law of Visiting Forces* (2001).

organization excludes the responsibility of its member states for the same conduct.

Based on a review of state practice and the pertinent case law, Zwanenburg shows in Chapter 2 that member states' concurrent responsibility cannot be conclusively confirmed or denied. The UN has traditionally accepted that the acts of multinational peace-keeping forces are, in principle, imputable to it. This attribution is based on the assumption that the force in question constitutes a subsidiary organ of the Security Council or the General Assembly, and that it falls under UN command and control. However, the concurrent responsibility of states contributing personnel to the operation cannot be excluded whenever these two conditions are satisfied. For example, a state may violate its duty under common Article 1 of the Geneva Conventions of 1949 to respect and to ensure respect for the Conventions by failing adequately to instruct its troops assigned to a UN operation. In addition, where a national contingent was placed at the disposal of the UN, but in fact remains under the effective control of the contributing state, the state in question, rather than the UN, will be responsible for the conduct of the contingent.

Turning to NATO, Zwanenburg claims that state practice relating to NATO operations is rare, if not non-existent. Rather than being extremely rare, it is more likely that information about the relevant practice is just extremely difficult to gain access to. Either way, the lack of publicly available materials means that NATO's practice cannot be assessed in the same detail as that of the UN. Indeed, Zwanenburg's analysis is limited to just two examples, neither of which is conclusive. In the case of SFOR, third party claims (other than claims relating to the force headquarters) were settled by the troop contributing states, and not by NATO as a whole. Questions concerning NATO's responsibility arose before the European Court of Human Rights in *Banković* and before the International Court of Justice in the *Legality of the Use of Force* cases, but were not addressed by the courts. While the example of SFOR may suggest that NATO practice differs from that of

the UN, in that responsibility is borne by troop contributing states and not NATO as a whole (except for damages caused by the force headquarters), Zwanenburg does not take this view. However, he rightly concludes that 'the attribution of conduct in connection with a UN or NATO peace support operation is not an *a priori* exercise, but depends very much on the specific circumstances of the case' (at 129). Interestingly, neither Zwanenburg nor the cases he refers to mention the additional difficulty that NATO is not a single international legal person: Supreme Headquarters Allied Powers Europe (SHAPE) enjoys and relies on its own international legal personality,<sup>3</sup> and as a result may well bear concurrent responsibility for the conduct of NATO missions.

The applicability of international humanitarian law to peace support operations has already been discussed extensively in the academic literature. Zwanenburg sets out the terms of the debate in Chapter 3 with admirable clarity. Although not bound by international humanitarian treaties, the UN and NATO are required, as international legal persons, to observe those rules of humanitarian law which have attained the status of customary international law. This does not, however, apply to action taken under Chapter VII of the UN Charter, where the Security Council may derogate from international norms.<sup>4</sup> Based on a detailed review of the relevant sources, Zwanenburg demonstrates that practice confirms the applicability of humanitarian law to peace support operations.

Having established that the UN and NATO are responsible, in principle, for violations of international humanitarian law, in Chapter 4 Zwanenburg considers the legal consequences that flow from such breaches. Following a discussion of what form the reparation for injury caused by the two

<sup>3</sup> E.g. Netherlands–SHAPE Agreement on International Military Headquarters, 25 May 1964, 544 UNTS 245. But see Austria–NATO Agreement on Privileges and Immunities, 16 Dec. 1995, 1912 UNTS 271.

<sup>4</sup> E.g. SC Res 1483. See Scheffer 'Beyond Occupation Law', 97 *AJIL* (2003) 842.

organizations may take and their practice in settling claims brought against them, Zwanenburg finds that most cases where compensation was offered were not accompanied by a clear recognition on part of the UN and NATO of their international responsibility. However, neither this, nor the fact that the sending states, rather than the organization, exercise criminal jurisdiction over peacekeepers charged with violations of international humanitarian law, contradicts the responsibility of the two organizations for acts attributable to them. Finally, in Chapter 5, Zwanenburg examines the mechanisms currently available to states and individuals to invoke the responsibility of the UN and NATO for violations of humanitarian law, including, in particular, the use of human rights bodies.

In *The Prosecution and Defense of Peacekeepers under International Criminal Law*, Geert-Jan Alexander Knoops seeks to provide a 'comprehensive analysis of the question of whether, and to what extent, international criminal law in both its substantive and procedural forms is applicable to [peacekeepers] without restrictions' (at 30–31). The book is divided into three parts, the first describing the nature and scope of international peacekeeping operations, the second dealing with questions of substantive criminal law, and the third addressing jurisdictional and prosecutorial matters. However, despite its promising title and ambitious research agenda, the book fails to deliver. Its flaws are numerous and fundamental.

The book is not structured in a manner that facilitates the discussion of the subject matter. In a monograph such as this, one would expect the author to begin by describing the legal setting or framework of the topic under discussion in order to introduce the reader to the subject and to lay the foundation for subsequent chapters. Instead, Knoops opens with Chapter II on 'The Evolving International Criminal Law Context of International Peacekeeping Operations'. The key point made in the chapter, repeated again and again (cf. at 69–71), is that the increasing reliance of peacekeepers on the use of armed force to accomplish their mandate has resulted in their emergence as a 'new category of sub-

jects of international criminal law'. Leaving aside that robust peacekeeping mandates have been with us since ONUC, created in 1960, the reader is left wondering whether, in the absence of a robust mandate, peacekeepers would not be subject to international criminal law. The chapter sits uneasily with the central thesis of the book that 'international peacekeepers are subject to the same substantive and procedural rules of criminal law as ordinary defendants' (at 2). In fact, Knoops makes no attempt systematically to examine the distinct legal features of peacekeeping operations and whether the scope of peacekeepers' responsibility under international criminal law differs from that of other individuals.

Chapter III looks at the sources of international criminal liability for peacekeepers, but sheds little light on the matter. Knoops argues that the Geneva Conventions of 1949 and their Additional Protocols of 1977 'represent a potential cluster of international criminal law sources that technically can be transposed onto individual peacekeepers' (at 81). As a preliminary point, it is open to question whether Additional Protocol II, relating to conflicts of a non-international character, could ever apply to an armed conflict involving a multinational force. It is equally difficult to follow Knoops when he suggests that common Article 1 of the Geneva Conventions, a provision directed at states, gives rise to individual criminal responsibility on the part of peacekeepers. Moreover, whereas Chapter III contains a detailed but obscure discussion of the role played by Rules of Engagement, it affords international instruments specifically dealing with international crimes, such as the Rome Statute of the International Criminal Court, only the most cursory of treatments. For reasons that are not clear, Knoops considers Article 28 of the Rome Statute on superior responsibility to be of special importance to peacekeepers, which leads him to devote a disproportionate amount of attention to the question in a later chapter.

The author's line of reasoning is often confusing. A typical example of this may be found

in Chapter VI (at 282ff), where Knoops seeks to determine whether the international community's criticism of the efforts made by the US Government to obtain immunity for US peacekeepers from the jurisdiction of the ICC are valid. Knoops first notes that Security Council Resolutions 1422 and 1487, both of which temporarily exempt US forces from the jurisdiction of the ICC, 'ten[d] to intrude dispositions into an area governed by precise principles of international criminal law, such as the principle of equal subjection to (international) law'. This observation is followed by a lengthy quotation from an article by Ruth Wedgwood concerning the operational difficulties encountered by UN peacekeeping operations. This in turn leads Knoops to ask whether 'the complex position of peacekeepers merits separate judicial treatment from that of accused who are not qualified as peacekeepers'. He answers that '[j]udicially, there is no persuasive argument to make a distinction between military commanders and peacekeepers engaged as combatants in hostilities as regards international criminal law responsibility concepts, including subjection to the jurisdiction of the ICC'. To illustrate the point, Knoops describes the role of UNPROFOR in the Srebrenica massacre. As a second example, he cites the General Assembly's resolution concerning the Principles of International Law Recognized in the Charter of the Nuremberg Tribunal to the effect that 'crimes against peace are "punishable as crimes under international law . . ."'. Not only is his argument difficult to comprehend, but it also does not address the question it was meant to answer. In addition, Knoops' reasoning can easily be (mis)understood to imply that, as a result of the principle of equal application of international law, the ICC Statute imposes the same obligations on states not parties to the Statute as on states that are parties to it.

The flow of discussion is frequently interrupted by detailed descriptions of individual cases and summaries of academic writings, the relevance of which is not always readily apparent. A case in point is the extended discussion of Post-Traumatic Stress Disorder (at

200–205). More alarming, however, is Knoops' at times cavalier use of sources. The text beginning at the bottom of page 93 and ending mid-way on page 96 is taken, with some minor modifications, word for word from an article written by Carla Bongiorno.<sup>5</sup> While a footnote on page 96 refers to the original source of the text, neither that footnote nor any other sign makes it sufficiently clear that the reader is faced with the work of someone other than Knoops. Similarly, pages 257 to 263 reproduce, again with minor alterations, almost the entire text of an article written by Sean D. Murphy.<sup>6</sup> Although this time Knoops acknowledges in a footnote that the present section 'is derived' from Murphy's work, this caveat does not reflect the fact that the text is actually copied from, rather than just based on, Murphy's article. Whether intentionally or by accident, in both cases the reader is led to believe that the words are those of Knoops.

Adding to the overall confusion is the author's eccentric use of terms, coupled with his sometimes incorrect use of the English language. On the one hand, Knoops coins several peculiar expressions, such as 'UN self-rule' (at 45), without taking the trouble to explain what he means by them. On the other hand, he employs established legal terminology in unusual ways. Examples include 'international constitutional boundaries' (at 46) meaning rules of international law, 'eligibility of peacekeepers for international criminal law responsibility' (at 66) meaning individual criminal responsibility, '*jus ad bellum* in international humanitarian law' (at 228) meaning . . . not much at all. His extremely broad understanding of 'peacekeeping' seems to cover the doctrine of humanitarian intervention as well as the recent use of force against Afghanistan and Iraq. Knoops fails clearly to

<sup>5</sup> See Bongiorno, 'A Culture of Impunity: Applying International Human Rights Law to the United Nations in East Timor', 33 *Columbia Human Rights Law Review* (2001–2002) 623, at 646–647.

<sup>6</sup> Sean Murphy, 'Efforts to Obtain Immunity from ICC for US Peacekeepers', 96 *AJIL* (2002) 725.

distinguish forceful reprisals from belligerent reprisals, and to differentiate individual criminal responsibility from state responsibility.

The book also contains many mistakes of fact. On his list of military missions launched by the European Union, Knoops fails to mention an existing mission, but invents an imaginary one (at 40). The General Assembly's Friendly Relations Resolution of 1970 is referred to as a Security Council resolution (at 230). Many of the arguments advanced by Knoops are open to question. He claims that Security Council Resolutions 1422 and 1487 are in breach of Articles 31 and 32 of the Vienna Convention on the Law of Treaties (at 292), that the conduct of states not parties to the Rome Statute could constitute 'subsequent practice' for the purposes of interpreting the Statute under Article 31 of the Vienna Convention (at 309), and that the concept of 'state criminal liability of the troop-contributing states is and must form an essential cornerstone' of UN peacekeeping activities (at 345). The book is not based on a systematic overview of the existing literature and the relevant primary materials. Major works on the legal nature of peace support operations have not been consulted,<sup>7</sup> while some of the publications Knoops does rely on are outdated. In general, the book seems inadequately researched.

As has become clear by now, the two books reviewed here are of a completely different calibre. Marten Zwanenburg's *Accountability of Peace Support Operations* makes a most welcome contribution to the literature on the subject. Above all, the book's merit lies in clarifying the legal framework governing the international responsibility of the UN and NATO for violations of humanitarian law in a highly accessible manner. Zwanenburg specifically addresses the concurrent responsibility of troop contributing states, a matter not widely discussed by other commentators. Cer-

tain other questions, however, have received less attention than one might have hoped. Most importantly, Zwanenburg does not systematically investigate the circumstances precluding the wrongfulness of conduct that would otherwise give rise to responsibility. Self-defence, operational necessity, and the consent of the state hosting the operation are the most relevant factors in this respect. Ideally, a separate chapter should have been devoted to this matter. Particularly interesting among the arguments developed in the book is Zwanenburg's suggestion that the UN and NATO establish permanent claims commissions to settle claims relating to injury or damage caused to private third parties by a peace support operation under their control. Assuming that various practical difficulties can be overcome, especially the problem of ensuring easy access to the commissions for prospective claimants, the creation of such permanent bodies would undoubtedly enhance the consistency and transparency of the claims settlement procedures employed in peace support operations.

By contrast, this reviewer found *The Prosecution and Defense of Peacekeepers under International Criminal Law* by Geert-Jan Alexander Knoops to be a disappointing read. The book suffers from tortured reasoning, factual inaccuracies, careless language, incoherence, a poor structure, and is riddled with typographical errors. Most importantly, it falls far short of explaining the applicability of international criminal law to members of peacekeeping forces in a clear and comprehensive manner. Arguably, as a result of this book, such an analysis is more urgently needed than before.

While there are few parallels that can usefully be drawn between the two books under review, their respective subject matters do overlap to a considerable extent. Generally speaking, international organizations conducting peace support operations, and individual peacekeepers, are subject to the same set of international humanitarian rules. This means that the violation of these norms may at the same time engage the individual criminal responsibility of peacekeepers and the

<sup>7</sup> See the materials referred to in footnote 2. However, Knoops does cite F. Seyfersted, *United Nations Forces in the Law of Peace and War* (1966) and H. McCoubrey and N. White, *The Blue Helmets: Legal Regulation of United Nations Military Operations* (1996).

international responsibility of the organization concerned. In both cases, however, the discharge of their respective responsibilities may be hindered by jurisdictional immunities. This area of international law is thus caught in the familiar dilemma between the imperative of holding the perpetrators of international crimes to account and to compensate private individuals for injury or damage they have sustained on the one hand, and the need for jurisdictional immunities to guarantee the effective conduct of international relations on the other hand. The proliferation of peace support operations and the increasing complexity of their objectives suggest that this dilemma is here to stay. Whereas Marten Zwanenburg's work offers an excellent guide to these matters, Geert-Jan Alexander Knoop's book, regrettably, does not.

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doi: 10.1093/ejil/chl008

**Denise K. DeGarmo. *International Environmental Treaties and State Behavior. Factors Influencing Cooperation.*** New York & London:

Routledge, 2004. Pp. 194. £60 ISBN: 0-415-97181-0.

Olav Schram Stokke, Jon Hovi, and Geir Ulfstein (eds). ***Implementing the Climate Regime. International Compliance.*** London: Earthscan, 2005. Pp. 240. £54 ISBN: 1-84407-161-8.

International environmental co-operation has given impetus to an increasing number of books, articles, and studies in a range of disciplines, most notably law, international relations (IR), international politics (IP), and economics. This has happened for a good reason: international and regional environmental treaties have grown in number and significance since the mid-1980s and have developed into distinct multilateral regimes. Studies on state behaviour with respect to international regulatory instruments, their

creation, implementation, compliance, and enforcement, have proliferated, thanks to the nature of global environmental co-operation that forms an excellent laboratory for examining state behaviour within international society. The creation, maintenance, and further development of multilateral environmental agreements (MEAs) is an extremely interesting field of study for many disciplines.

In this context, any new book in the discipline has to justify its usefulness and convince the readers of its originality. Ideally, the book should be an original contribution to the existing knowledge in the field, providing insights and inspiration for scholars and even for the diplomats and people who are effectively engaged in MEA negotiations. The two books under review here approach the issue of international environmental co-operation from different angles: the book by DeGarmo, *International Environmental Treaties and State Behavior. Factors Influencing Cooperation*, deals with state behaviour generally under international environmental agreements and is more an academic contribution. *Implementing the Climate Regime: International Compliance* by Stokke *et al.*, on the other hand, is concerned with the issue of compliance under one particular regime and as a scholarly work has perhaps more direct practical value.

For a non-expert, it would actually be beneficial to have previously acquired some familiarity with the literature on state behaviour, based on international relations and international politics, before reading the book on Kyoto compliance. Indeed, the latter heads directly for the main issue without much of a theoretical overview on state behaviour under international regimes in general. The DeGarmo book could serve that purpose and it does introduce the reader to the basics of the theories of international relations and the history of international environmental co-operation despite its brevity (121 pages + annexes and indexes).

DeGarmo asserts that what is missing from the literature on international law is a more developed discussion of why states become parties to international environmental agreements in a more general context (at 24). This question is of course different from compliance,