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Jus Paciarii: Emergent Legal Paradigms for U.N. Peace Operations in the 21st Century

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Sharp, W. Gary, Jr. *Jus Paciarrii: Emergent Legal Paradigms for U.N. Peace Operations in the 21st Century*. Stafford, Va.: Paciarrii International, 1999. 392pp. (no price given)

The recent conflict in former Yugoslavia provides an important vehicle for Gary Sharp as he explores the emergence of three international-law paradigms that will be critical to successful future humanitarian and peacekeeping operations. Sharp is an international law scholar and retired Marine Corps judge advocate whose previous books include the highly regarded *UN Peace Operations* (1995) and *CyberSpace and the Use of Force* (1999). He carefully presents legal arguments and rational supporting paradigms that afford peacekeepers greater legal protection, impose an obligation on all states to search for and arrest war criminals, and grant the United Nations, states, and peacekeepers a greater range of legal authority to use armed force for humanitarian intervention.

To prove these paradigms, Sharp reviews in parts I and II existing international-law protections for all military forces, details the evolution of UN peacekeeping operations, and examines the state practice that has most changed the international community's attitude toward its peacekeepers. This section concludes that military forces serving under the UN Charter, Chapter VII

mandate—authorizing the use of “all necessary means”—should enjoy absolute immunity from any state against which the Security Council has directed coercive action. A draft protocol advocated by Sharp would, if accepted by the community of nations, protect all personnel who serve under the authority of the United Nations and make them unlawful targets under any circumstances.

In part III, Sharp examines the history of a state's obligation to search for and arrest suspected war criminals. Detailing the responsibility of states with respect to persons suspected of war crimes in Bosnia and Kosovo, he concludes that customary international law obliges all states to search for and arrest persons suspected of “grave breaches” in all territories in which they have been granted jurisdiction by international law.

Part IV is by far the most important, in the opinion of this reviewer. For the first time, a scholarly examination has been undertaken of the right of nations to intervene for humanitarian reasons when their own nationals are not at risk and no UN resolution authorizes military action. The determination by the United States to support a military response by Nato in Kosovo, despite the absence of the Security Council's approval, has been severely criticized in international legal circles as *ultra vires* (without

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authority). Carefully reviewing the key issue of whether Nato can exercise its regional prerogative under Chapter VIII of the UN Charter (addressing the authority of regional organizations) and use all necessary means under Chapter VII without Security Council authorization, the author makes the case that state practice and customary international law have developed sufficiently to condone humanitarian intervention to prevent genocide and other widespread and arbitrary deprivation of human life in violation of international law. In Kosovo, moreover, the fear of the conflict's spreading into neighboring Nato states such as Hungary gave the alliance legal justification to use reasonable and proportional force in collective self-defense to contain the civil war within Serbia-Montenegro's borders. We may rightly conclude, with Sharp, that existing law and state practice permit a nation or a collective of states in a regional organization like Nato to use armed force to prevent genocide and other widespread abuses of human life within its regional boundaries, with or without Security Council authorization.

In this comprehensive volume, Sharp demonstrates through state practice that the international community desires to adhere to the principles embraced by the charter of the United Nations. He concludes that the international

community must now embrace legal paradigms that embody and enable these principles.

However, this volume leaves for another day the resolution of the conflict between a nation's exercise of its *inherent* right of self-defense (beyond that provided by the UN Charter) *as judged by that nation* and the concomitant right of peace-enforcement units, operating under the aegis of the United Nations Security Council, to exercise their mandate free from obstruction in that nation's territory. Where these rights collide, there has historically been agreement that the forces involved in national self-defense would not be held liable and could not be prosecuted criminally, whatever the moral stature of their nation's cause. Under the peacekeeper-protection regime advocated by the author, however, all this could change; peacekeepers and peace enforcers would enjoy complete immunity from any attacks, whether in self-defense or otherwise made, when operating under UN authority.

This book's principled discussion of humanitarian intervention and the authority of regional organizations to exercise their power separate from Security Council approval makes it one of the most important legal treatises published in years. This volume is a welcome addition to the literature, and it will be considered a valuable

resource for every serious international practitioner.

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Yost, David S., *NATO Transformed: The Alliance's New Roles in International Security*. Washington, D.C.: United States Institute of Peace Press, 1998. 450pp. \$19.95

For the student or policy analyst of European security, David Yost, professor of international relations at the U.S. Naval Postgraduate School in Monterey, California, has written an exceptional book. An expert on European security issues, he has an impressive academic background and has spent time in the world of policy making at the Pentagon (net assessments). With this work Yost does not simply provide a history of a post-Cold War Nato grappling to adapt to a world where the principal impetus for its existence—the Soviet threat—has passed. He offers a comprehensive account of the two new roles that Nato has assumed: cooperation with former adversaries and other non-Nato states in the Euro-Atlantic region, and crisis management and peace operations. As part of his investigation into cooperation with former adversaries, he presents a full analysis of Nato enlargement, an issue that drew much

attention in 1998 and 1999 and is still pertinent today. In addition, Yost provides a full analysis of the implications of these new roles, especially regarding their relationship to Nato's first and continuing role: the collective defense of the territorial integrity of its member states. Thus this book is not only a recent, political-military, Euro-Atlantic history but also an analysis of current and future issues for policy makers within Nato states and, indeed, states aspiring to membership. Additionally, Yost, relying mainly on the scholarship of Inis Claude and Martin Wight, offers the reader the international political theory (collective security, collective defense, and balance-of-power politics) necessary to provide a conceptual and historical foundation for his analysis of current issues.

Yost's analysis is systematic, wide ranging, and compelling. He is fastidious in clarifying the issues and then presenting, in scholarly depth, their many sides before offering his own sense. In the opening pages he provides his thesis: Nato has two new principal roles, but its original function of collective defense remains paramount. The alliance has increasingly taken on collective-security activities on a selective basis. This raises three issues, the most important of which is how to reconcile the new roles (thus "devising positive synergy")