

**JUS PACIARII:  
EMERGENT LEGAL PARADIGMS FOR  
PEACE OPERATIONS IN THE 21ST CENTURY<sup>1</sup>**

REVIEWED BY COLONEL JAMES P. TERRY<sup>2</sup>

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

As his mode of proving these paradigms, Sharp, in Parts I and II, reviews existing international law protections for all military forces, details the evolution of UN peace operations, and examines the decade of state practice that has most changed the international community's attitude toward its peacekeepers. These parts conclude that military forces serving under a UN Charter, Chapter VII mandate (authorizing the use of necessary means) should enjoy absolute immunity from any receiving state authority against which the Security Council has directed coercive action. The draft protocol advocated by the author and included within this part, if accepted by the community of nations, would protect all personnel who serve under the authority of the United Nations, and make them unlawful targets under all circumstances.

In Part III of the text, Sharp examines the history of a state's obligation to search for and arrest suspected war criminals, details the obligations of states to search for and arrest persons suspected of war crimes in Bosnia

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1. W. GARY SHARP, SR., *JUS PACIARII: EMERGENT LEGAL PARADIGMS FOR PEACE OPERATIONS IN THE 21ST CENTURY* (1999); 392 pages, \$24.95.

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and Kosovo, and concludes that customary international law imposes an obligation on all states to search for and arrest persons suspected of grave breaches in all territories where they have been authorized by international law to exercise jurisdiction.

Part IV of the text is by far the most important, in the view of this reviewer. For the first time, a scholarly examination is undertaken of the right of nations to intervene for humanitarian reasons where they have neither their own nationals at risk nor a UN resolution authorizing military action to rely upon. The determination by the United States to support a military response by the North Atlantic Treaty Organization (NATO) in Kosovo, despite the lack of Security Council approval, was severely criticized in the international legal circles as *ultra vires*. In 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), using 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 arbitrary deprivation of human life in violation of international law. In Kosovo, moreover, the reasonable fear of the conflict spreading into neighboring NATO states such as Hungary, gave NATO legal justification in using reasonable and proportional force in collective self-defense to prevent the civil war from reaching beyond Serbia-Montenegro. We may rightly conclude, as did Sharp, that existing law and state practice permit a state or 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 whether Security Council authorization is present or not.

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 the legal paradigms that embody and enable these principles.

This volume leaves for another day resolution of the conflict between the exercise of a nation's inherent right of self-defense (beyond that provided by the Charter) *as judged by that nation*, and the concomitant right of peace enforcement units, operating under the aegis of the UN Security Council, to exercise their charter free from obstruction in that nation's territory. Where these rights collide, there has always been agreement, his-

torically, that the forces involved in national self-defense would not be held liable and could not be prosecuted criminally for their participation, despite the lack of moral suasion in their nation's cause. Under the peacekeeper protection regime advocated by the author, however, all this could change, as the peacekeepers and peace enforcers would enjoy complete immunity from any attacks, whether in self-defense or otherwise, when operating under UN authority. Nevertheless, the principled discussion within this text concerning humanitarian intervention and the authority of regional organizations to exercise their authority separate from Security Council approval makes this one of the most important legal treatises published in years. This volume is a welcome addition to the literature and will be considered a valued resource of every serious international practitioner.