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# **PART I : BOOKS**

## **PREMIERE PARTIE : LIVRES\***

341.3 /00108

Computer Network Attack and International Law - Newport, RI : Naval War College.

xv, 568 p.; 24 cm.

(International Law Studies ; 76)

ISBN: 1884733220

Subject(s):

1. INFORMATION WARFARE
2. WAR (INTERNATIONAL LAW)
3. INFORMATION OPERATIONS
4. USE OF FORCE (INTERNATIONAL LAW)

Added entry(s):

1. Schmitt, Michael N., 1956- , ed.
2. O'Donnell, Brian T., ed.
3. Naval War College (US)

Notes:

Includes index.

'In 1999 the nature of international law's applicability to computer network attack was quite uncertain. Despite the increasing attention paid to the issue since then, much uncertainty remains. This volume addresses the most pressing issues. It begins with contributions describing the operational milieu in which the law applies, including its technical possibilities and strategic significance. The focus then shifts to the law. Most significant is the legal analysis of the jus ad bellum, that aspect of international law governing when a State may resort to force as an instrument of national policy. Equally challenging are the jus in bello issues, i.e. those that surround the conduct of hostilities. Complex questions regarding computer network attack extend beyond the confines of the jus ad bellum and jus in bello. This volume explores the key ones. Specific attention is devoted, for instance, to the topics of neutrality, space operations, intelligence gathering, and terrorism. Additionally, both the suitability of existing treaty law and application of rules of engagement are considered.'

ID number: 80017992

Year: 2002

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\* This list contains material received as of January 21<sup>st</sup>, 2003 – Cette liste est arrêtée au 21 janvier 2003.

323 /00674

La crise des Balkans de 1999 : les dimensions historiques, politiques et juridiques du conflit du Kosovo - Bruxelles : Bruylant.

323 p. : ill. ; 17 cm.

(Axes ; 22)

ISBN: 2802713825

Subject(s):

1. KOSOVO (SERBIA)--HISTORY--CIVIL WAR, 1998-1999
2. NATO--ARMED FORCES--KOSOVO (SERBIA)
3. USE OF FORCE (INTERNATIONAL LAW)

Added entry(s):

1. Morand, Charles-Albert, ed.

Notes:

Bibliography : p. 299-313. Includes index.

'Le present ouvrage cherche a comprendre et a expliquer, d'un point de vue historique, politique et juridique, le conflit qui a eclate au Kosovo en mai 1999. La partie consacree a l'histoire de la region met en lumiere les multiples manipulations et reappropriations, a des fins strategiques, d'un passe riche et complexe. La partie politique quant a elle, montre que l'intervention de l'OTAN, pourtant geographiquement localisee, a eu des consequences geopolitiques importantes sur l'ensemble des Balkans. La partie juridique traite de la difficile question de savoir si des violations massives des droits de l'homme rendent licite l'emploi de la force armee.'

ID number: 80016998

Year: 2000

341.3 /00071

Right v. Might : International Law and the Use of Force - New York : Council on Foreign Relations.

xii, 199 p. ; 23 cm.

ISBN: 0876091095

Subject(s):

1. AGGRESSION (INTERNATIONAL LAW)
2. INTERVENTION (INTERNATIONAL LAW)
3. USA--FOREIGN RELATIONS

Added entry(s):

1. Council on Foreign Relations (US)

Notes:

Includes index.

ID number: 80006998

Edition: 2nd ed.

Year: 1991

341.3 /00095

Self-Defense Against the Use of Force in International Law - The Hague : Kluwer Law International.

xiv, 359 p. ; 25 cm.

(Developments in International Law ; 23)

ISBN: 9041102477

Author(s):

1. Alexandrov, Stanimir A.

Subject(s):

1. SELF-DEFENSE (INTERNATIONAL LAW)

Notes:

Bibliography: p. 299-352. Includes index.

ID number: 80014759

Year: 1996

341.3 /00035

International Law and the Use of Force by States - Oxford, UK : Clarendon Press.

xxviii, 532 p.; 25 cm.

Author(s):

1. Brownlie, Ian

Subject(s):

1. WAR (INTERNATIONAL LAW)
2. AGGRESSION (INTERNATIONAL LAW)
3. CRIMES AGAINST PEACE

Notes:

Bibliography: p. 437-519. Includes index.

ID number: 80012921

Year: 1963

341.2 /00286

L'intervention armee de l'OTAN en Republique federale de Yougoslavie - Paris : Pedone.

vii, 277 p.; 21 cm.

(Perspectives internationales ; 22)

ISBN: 2233003853

Author(s):

1. Buzzi, Alessandro

Subject(s):

1. NATO--ARMED FORCES--KOSOVO (SERBIA)
2. KOSOVO (SERBIA)--HISTORY--CIVIL WAR, 1998-1999
3. HUMANITARIAN INTERVENTION
4. USE OF FORCE (INTERNATIONAL LAW)
5. INTERVENTION (INTERNATIONAL LAW)

Notes:

Bibliography: p. 235-263.

'Lancee par l'OTAN le 24 mars 1999, l'operation Force Alliee a engage les forces atlantiques dans une intervention armee visant a mettre un terme aux exactions perpetrees par le regime yougoslave de Slobodan Milosevic contre les populations albanophones du Kosovo. Legitimee par ses auteurs au nom de ses objectifs humanitaires, cette utilisation de la force peut neanmoins etre questionnee quant a sa legalite internationale tant en ce qui concerne le droit du recours a la force (jus ad bellum) que le droit des conflits armes (jus in bello). En effet, cette operation armee s'inscrit dans un nouveau concept strategique de l'Alliance atlantique tout en se placant sur le terrain contestable de l''intervention humanitaire' alors meme qu'elle se trouve en contradiction avec les regles posees par la Charte des Nations Unies en matiere de recours a la force. Par ailleurs, la conduite des hostilites, reposant uniquement sur l'utilisation de l'arme aeriennne, conduit a mettre en cause l'adequation des methodes et moyens de combat aux buts humanitaires affiches. Alors que la decennie quatre-vingt-dix s'etait ouverte sur la proclamation d'un 'nouvel ordre mondial' devant assurer la paix par le droit international, elle s'est ainsi paradoxalement close sur une intervention armee mettant en question les futurs contours de la securite internationale.'

ID number: 80018065

Year: 2001

341.2 /00294

Just War or Just Peace ? : Humanitarian Intervention and International Law - Oxford, UK : Oxford University Press.

xxviii, 295 p.; 24 cm.

ISBN: 019925799X

Author(s):

1. Chesterman, Simon

Subject(s):

1. INTERVENTION (INTERNATIONAL LAW)
2. HUMANITARIAN INTERVENTION
3. JUST WAR DOCTRINE
4. USE OF FORCE (INTERNATIONAL LAW)

Notes:

Bibliography: p. 260-282. Includes index.

'This book critically examines the right of humanitarian intervention, asserted most spectacularly by NATO during its 1999 air strikes over Kosovo. The United Nations Charter prohibits the unilateral use of force, but there have long been arguments that such a right might exist as an exception to this rule. In addition, the increased role of the UN Security Council through the 1990s transformed the way in which the international community views humanitarian crises. Through an analysis of these questions, the book puts NATO's action in Kosovo in its proper legal and historical perspective.'

ID number: 80018295

Edition: New ed.

Year: 2002

341.2 /00281

The Intervention Debate : Towards a Posture of Principled Judgment - Carlisle Barracks, PA : US Army War College.

v, 89 p.; 23 cm.

ISBN: 1584870818

Author(s):

1. Garofano, John

Subject(s):

1. USE OF FORCE (INTERNATIONAL LAW)
2. INTERVENTION (INTERNATIONAL LAW)--USA

Added entry(s):

1. US Army War College. Strategic Studies Institute (US)

Notes:

'Deciding when and how to use force is one of the central elements of strategy. Throughout American history, debate has raged over whether force is appropriate only in defense of the homeland and vital national interests or whether it should also be used to promote more expansive objectives like regional security and stopping humanitarian disasters in regions with few tangible US interests. The author argues that what may be called the Powell-Bush argument is a useful starting point for forging a consensus, since it recognizes the need for flexibility, choice, and balance - in a word, judgment - when force is considered. After examining the advantages of this and the other postures adopted by previous administrations, the author makes the case for an approach based on 'principled judgment'. A series of principles, or guideposts, for intervention policy are then suggested, followed by the argument for several institutional changes that should strengthen the ability of diverse administrations to exercise judgment when using force. He concludes with a discussion of Army roles and requirements for future contingencies.'

ID number: 80017866

Year: 2002

341.3 /00101

Computer Network Attack and the Use of Force in International Law :  
Thoughts on Normative Framework - [s.l.] : US Air Force Academy.  
viii, 61 p.; 23 cm.

(Research Publication ; 1)

Author(s):

1. Schmitt, Michael N.

Subject(s):

1. INFORMATION OPERATIONS
2. WAR (INTERNATIONAL LAW)
3. USE OF FORCE (INTERNATIONAL LAW)

Added entry(s):

1. US Air Force Academy. Institute for Information Technology Applications

Notes:

'This book explores the acceptability under the jus ad bellum, that body of international law governing the resort to force as an instrument of national policy, of computer network attack. Analysis centers on the United Nations Charter's prohibition of the use of force in Article 2(4), its Chapter VII security scheme, and the inherent right to self-defense codified in Article 51. Concluding that traditional applications of the use of force prohibition fail to adequately safeguard shared community values threatened by CNA, the Article proposes an alternative normative framework based on scrutiny of the consequences caused by such operations.'

ID number: 80016139

Year: 1999

341.2 /00267

Operation Allied Force : A Case of Humanitarian Intervention ? - Rome :  
NATO Defense College.  
134 p.; 21 cm.

(NATO Defense College Monograph Series)

ISBN: 8887967016

Author(s):

1. Simonen, Katariina

Subject(s):

1. NATO--ARMED FORCES--KOSOVO (SERBIA)
2. HUMANITARIAN INTERVENTION
3. INTERVENTION (INTERNATIONAL LAW)
4. USE OF FORCE (INTERNATIONAL LAW)

Added entry(s):

1. NATO Defence College (IT)

Notes:

'This is a seminal work on the international legal framework against which NATO's resort to armed intervention in the Former Republic of Yugoslavia is judged. The study considers the legitimacy of that decision, and draws the conclusion that the humanitarian imperatives put forward to justify the intervention fall short of universal legal acceptance. Nevertheless, what emerges from this analysis is that Operation Allied Force can be viewed as a significant milestone in the development of a law of humanitarian intervention. Instead of being considered as an exceptional case, it belongs to a continuum of interventions where humanitarian considerations have played a part.'

ID number: 80017109

Year: 2000

## **PART II : JOURNAL ARTICLES**

### **DEUXIEME PARTIE : ARTICLES DE REVUES\*\***

- Applegate, R. A. D.  
Observations on the Use of Force in Complex Emergencies.  
RUSI JOURNAL, vol. 147, no. 1, February 2002, p. 22-27.
  
- Barnett, Roger W.  
Information Operations, Deterrence, and the Use of Force.  
NAVAL WAR COLLEGE REVIEW, vol. 51, no. 2, Sequence 362, Spring 1998, p. 7-19.  
For the US military, the topics of central interest in information operations narrow down to two : deterrence and employment. Deterrence of an information attack against the United States and its friends and allies, and the use of information operations in the affairs of state constitute the dual focus of attention. This article examines deterrence as it relates to information operations and then offers some insights on employment. It argues first that for the two types of deterrence - general and immediate (or 'focused') - the United States has inherent strengths but also identifiable shortcomings that can be rectified. Second, this article contends that there are important and valid arguments against allowing information operations to be characterized as 'uses of force' in international law. The more routinely 'information operations' can be understood, like 'counter-terrorism', as self-defense not involving 'the use of force', the greater will be its contribution to US national security.
  
- Berdal, Mats  
Lessons not Learned : The Use of Force in 'Peace Operations' in the 1990s.  
INTERNATIONAL PEACEKEEPING, vol. 7, no. 4, Winter 2000, p. 55-74.  
The armed forces of several western countries have embraced the view that 'peace enforcement' constitutes a type of military activity that, while coercive in nature, remains distinct from 'war'. This view rests on two basic assumptions : that military force can be used impartially to enforce compliance with a given mandate without designating an enemy, and that using force in this manner will not prejudice the political outcome of the conflict in question. The experience of military operations in support of humanitarian objectives in the 1990s in places like Somalia and Bosnia, however, suggests that these assumptions are empirically unsustainable and optimistic in the extreme.
  
- Bouchet-Saulnier, Françoise  
Just War, Unjust Means ?  
WORLD TODAY, vol. 58, no. 8 - 9, August - September 2002, p. 26-28.  
Israeli actions against the Palestinians, US bombing in Afghanistan and the intervention of Russia's armed forces in Chechnya all have something in common : the fight against terrorism. They also share something else : a refusal to recognise the relevance of humanitarian law to this type of conflict.

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\*\* This list contains material received as of January 21<sup>st</sup>, 2003 – Cette liste est arrêtée au 21 janvier 2003.

- Brotons, Antonio Remiro  
 Bush y los Estados hampones.  
 POLITICA EXTERIOR, vol. 16, no. 90, noviembre - diciembre 2002, p. 91-98.  
 La estrategia de seguridad nacional de Bush amplia la noción de legitima defensa, reconocida por la Carta de las Naciones Unidas, hasta los limites de un ataque preventivo. EE UU no puede estar por encima de la ley internacional, mientras esta exista.
  
- Brotons, Antonio Remiro  
 Estados Unidos no se pregunta en que se equivoca.  
 POLITICA EXTERIOR, vol. 16, no. 85, enero - febrero 2002, p. 111-124.  
 La solidaridad con EE UU tras los atentados les da una oportunidad para ejercer el liderazgo del sistema multilateral centrado en la ONU. Sin embargo, su politica no parece moverse.
  
- Byers, Michael  
 Unleashing Force.  
 WORLD TODAY, vol. 57, no. 12, December 2001, p. 20-22.  
 The war against terrorism has already significantly eased the legal limits on the use of force. Despite a Security Council mandate for action, Washington has chosen instead to rely on its right of self-defence. It is this area that has seen the most dramatic change in the current conflict - states that support terror groups may now themselves be legally attacked.
  
- Cannizzaro, Enzo  
 NATO's New Strategic Concept and the Legal Regulation of Use of Force.  
 INTERNATIONAL SPECTATOR, vol. 36, no. 1, January - March 2001, p. 67-74.  
 This article discusses the implications of the alliance's new strategic concept for its changing policy of intervention and its relations with the UN, as well as for the general evolution of international law.
  
- Carpentier, Chantal  
 Les Etats-Unis hors la loi ?  
 DEFENSE NATIONALE, 57e annee, no. 5, mai 2001, p. 50-62.  
 Depuis que George Bush senior annonca l'instauration d'un 'nouvel ordre mondial' garantissant la paix et respectueux du droit international, il semble que les Etats-Unis ont pris conscience que cet ordre multipolaire mythique qui devait rendre a l'ONU sa place privilegiee dans le maintien de la paix et la gestion des crises, n'etait tout compte fait qu'une vue de l'esprit. L'ordre unipolaire qui s'est effectivement impose apres la disparition de l'ancien ordre bipolaire, laisse aux Etats-Unis le libre choix entre respecter le droit international public et ne pas le respecter, parce qu'ils sont de fait l'unique etat vraiment souverain du monde. L'obligation ancienne et maintes fois reiteree de ne pas recourir a la force est-elle applicable aux Etats-Unis ? Il semble s'agir d'une regle de droit international qu'ils ont juge utile a certaines epoques, mais qu'ils respectent ou non, en ne tenant compte que de leurs interets, et qu'ils se reconnaissent le droit de violer en tout impunité, faisant prevaloir la loi du plus fort parce qu'ils ont decide d'etre des hors-la-loi.
  
- Carpentier, Chantal  
 L' ONU au secours des Etats-Unis.  
 DEFENSE NATIONALE, 58e annee, no. 2, fevrier 2002, p. 55-66.
  
- Chernichenko, S.  
 NATO's Operation in Yugoslavia.  
 INTERNATIONAL AFFAIRS (Minneapolis), vol. 46, no. 1, 2000, p. 168-177.

- Chesterman, Simon  
Byers, Michael  
Has US Power Destroyed the UN ?  
RUSI JOURNAL, vol. 144, no. 4, August 1999, p. 27-30.
  
- Cook, Martin L.  
The Proper Role of Professional Military Advice in Contemporary Uses of Force.  
PARAMETERS, vol. 32, no. 4, Winter 2002 - 2003, p. 21-33.  
<http://www.carlisle.army.mil/usawc/parameters>  
The author examines the advisory role of the military in the application of force as major powers increasingly demonstrate a propensity to use military forces in the defense of humanitarian causes. Will this willingness to use force in the name of human rights create a new world order, replacing the Westphalian tradition ? What is the proper role for the military in this new political and moral relationship ? The author opines that the military's cultural expectation as to the use of overwhelming force to ensure the safety of its forces may require reconsideration when viewed with regard to issues such as proportionality and noncombatant immunity. If military experts are to exercise their professional expertise (management of violence) in this new environment, they must be more attuned to the ethical, political, and diplomatic constraints affecting their decisions.
  
- Dolnik, Adam  
Justice Beyond Question ? Military Responses to International Terrorism and Just War Theory.  
PERSPECTIVES, no. 18, Summer 2002, p. 21-39.  
Within the field of international relations, the right of states to protect their territory and the lives of their citizens against another state's aggression has become widely recognized. Strong consensus also exists in terms of the conditions under which the use of force is considered to be morally justifiable (Just War Doctrine). However, the issue of whether states are morally permitted to use force against non-state actors has not yet been as widely agreed upon. Still, in the past three decades pre-emptive and retaliatory air strikes against terrorist operatives have often been used. These operations have set an important precedent indicating that some countries have reached sufficient agreement regarding the moral feasibility of a military response. As is the case in inter-state warfare it makes intuitive sense that certain restrictions to the use of force should apply in the case of non-state actors as well. The normative issue of this paper deals with the circumstances under which states are morally justified to use force against non-state actors and the rules that they are obligated to follow in the process. The recent trends in international terrorism make this topic increasingly important.
  
- Egan, Patrick T.  
The Kosovo Intervention and Collective Self-Defence.  
INTERNATIONAL PEACEKEEPING, vol. 8, no. 3, Autumn 2001, p. 39-58.  
<http://www.ingenta.com>  
Without a UN Security Council authorization, the case for humanitarian intervention in Kosovo cannot justify NATO's use of force against the Federal Republic of Yugoslavia in 1999. By contrast NATO member states could have defended an armed intervention as a collective self-defence action under Article 51 of the UN Charter, though the campaign would have been significantly different than Operation Allied Force. Because it demands that one consider the legal interest of the intervening states in the defence of the victim and whether the forceful intervention is sufficiently targeted at the violation in question, the doctrine of self-defence may provide a legal basis for interventions in humanitarian crises and a useful set of criteria to evaluate their legality, especially when the UN Security Council fails to act.

- Farer, Tom  
 The Bush Doctrine and the UN Charter Frame.  
 INTERNATIONAL SPECTATOR, vol. 37, no. 3, July - September 2002, p. 91-100.  
 The author discusses the implications for the UN normative system of the US' declared readiness to act pre-emptively rather than simply as a response to an actual or imminent attack. He argues that the Bush doctrine of preventive war, to the extent that it implies unilateral action, is not compatible with UN Charter norms as it is in stark contrast with the principle of the equality of states on which the Charter system is founded. By the same token, according to Farer, the concept of self-defence cannot be resorted to to legitimize the use of force against states considered unfriendly or even with records of aggressive behaviour. He also argues that if the US should obtain UN endorsement of coercive action to prevent the proliferation of weapons of mass destruction or to hit selected regimes that are developing them, this would introduce an element of discrimination that would undermine the UN Charter frame. In turn, this would make it increasingly difficult to put restraints on the use of force and could pave the way for an uncontrollable spiral of violence.
  
- Goulding, Marrack  
 The Use of Force by the United Nations.  
 INTERNATIONAL PEACEKEEPING, vol. 3, no. 1, Spring 1996, p. 1-18.  
 This article develops a framework for analysing the use of force by the United Nations. There are two basic modalities : direct use of force deployed and commanded by the UN, and indirect use of force carried out by one or more Member States so authorized by the Security Council. Six purposes for the use of UN-authorized force are identified : peace enforcement, sanctions enforcement, self-defence, protection of civilians, protection of humanitarian activities and intervention in civil conflicts. The political and operational questions which arise from each are discussed. In particular the analysis indicates that 'mission creep' should be avoided and there should be clarity about whether a situation requires peacekeeping or enforcement. Although a 'halfway house' between the two is not ruled out, certain conditions should be fulfilled before embarking on such missions.
  
- Greenwood, Christopher  
 International Law and the 'War Against Terrorism'.  
 INTERNATIONAL AFFAIRS, vol. 78, no. 2, April 2002, p. 301-317.  
<http://www.swetswise.com>  
 This article analyses some of the international legal issues arising out of the events of 11 September 2001. Those who perpetrated the attacks on the World Trade Center and the Pentagon were guilty of serious offences under United States law and possibly also under international law. The fact that their conduct was a crime does not, however, preclude it also being a threat to international peace and an armed attack. The author argues that the United States and its allies were entitled to respond to that attack and the threat of future attacks by using force against Al-Qa'ida and that, in the circumstances, it was also legitimate to take military action against the Taliban regime in Afghanistan which had sheltered Al-Qa'ida and permitted it to conduct operations from Afghan territory. The article also examines the application of the laws of armed conflict to the ensuing fighting and the status and treatment of those captured and held at Guantanamo Bay.
  
- Helms, Jesse  
 American Sovereignty and the UN.  
 NATIONAL INTEREST, no. 62, Winter 2000 - 2001, p. 31, 4 p.  
 This article examines the association between the sovereignty of the United States and the United Nations.

- Latty, Franck  
 Guerre et paix au Kosovo : le droit international dans tous ses etats.  
 REVUE INTERNATIONALE ET STRATEGIQUE, no. 36, hiver 1999 - 2000, p.  
 89-102.  
 Le recours 'a la carte' au droit international par les differents  
 protagonistes de la guerre du Kosovo a ete flagrant. L'intervention des  
 pays de l'OTAN, fondee sur le respect des droits de l'homme, s'est  
 pourtant faite au mepris des regles internationales en matiere  
 d'interdiction du recours a la force. Neanmoins, la Cour internationale  
 de Justice, saisie par la Yougoslavie, a refuse de se prononcer sur cette  
 violation de la Charte des Nations unies. Selon certains auteurs, il faut  
 voir dans l'exemple du Kosovo la formation d'une nouvelle regle de droit  
 internationale qui permettrait, dans certains cas limites, le recours a  
 la force sans l'autorisation du Conseil de securite. Ce n'est que dans  
 l'apres-conflit que l'action du Kosovo a pu se situer dans une sphere  
 juridique et non plus politique et militaire. La resolution 1244 (1999)  
 du Conseil de securite prevoit la mise en place de 'presences  
 internationales civiles et de securite' au Kosovo, mais le statut de ce  
 dernier reste encore precitaire. La guerre du Kosovo aura en tout cas mis  
 en lumiere la vigueur grandissante du droit international penal et le  
 role important du Tribunal penal international pour l'ex-Yougoslavie,  
 comme l'a demontre l'inculpation de Slobodan Milosevic.
  
- Laurenti, Jeffrey  
 Iraqi Threats : What Common Cause Across the Atlantic ?  
 INTERNATIONAL SPECTATOR, vol. 37, no. 3, July - September 2002, p.  
 57-67.  
 The case of Iraq is analysed against the background of European criticism  
 of the US doctrine of preventive war. The author notes that there is a  
 fundamental divergence in this regard since conflict prevention is still  
 thought of in Europe in terms of preventive diplomacy rather than  
 preventive military action. The author also examines the three major  
 schools of thought in Washington concerning the action to be taken  
 towards Baghdad and the policy options that the Europeans should consider  
 in responding to US insistence on the need for military action. He  
 underlines that the military option against Iraq emerged in the US as a  
 result of the international community's waning determination to compel  
 Iraq to disarm and the prospect that fraying UN sanctions would soon  
 collapse altogether. This implies that if Europe insists on  
 multilateralism it must then ensure that this approach is effective  
 rather than just lamenting US unilateralism. European cohesiveness and  
 unity of purpose is essential, according to Laurenti, for achieving a  
 commonly shared Western approach towards an issue that is of central  
 strategic importance.
  
- Leibstone, Marvin  
 America's post 9/11 National Security Strategy : Implications for  
 Military Diplomacy and Preparation for 21st Century Warfare.  
 MILITARY TECHNOLOGY, vol. 26, no. 11, 2002, p. 11-15.

- Leurdijk, Dick A.  
De strijd tegen het internationale terrorisme en het recht op zelfverdediging.  
INTERNATIONALE SPECTATOR, jg. 56, nr. 1, januari 2002, p. 12-14.  
The author argues that the furnishing of proof in invoking the right of self-defence by the United States has left an uneasy feeling. The author argues that the bases for the justification of the use of force are somewhat ambivalent. Immediately after the terrorist attacks, the discussion was focused on three levels. At the Security Council level, two resolutions were adopted by the United States and proponents, as legitimising the use of force in the war against terrorism. Nevertheless, on analysing the resolutions, the author cannot find a formal foundation for such a legitimised military response. Next, the author discusses NATO and the adoption of its Article 5. On October 2nd, the North Atlantic Council formally determined that there had been an attack from outside the United States and invoked Article 5. Yet, when it comes to the evidence, the Article shows that doubt must remain. Finally, the author focuses on the discussion in the United States. Within days of the attacks, the Congress gave President Bush a virtually free hand in responding to the attacks with the use of force. However, according to the author, the American justification for the use of force lies rather with the right of self-defence, which under Article 51, is a cornerstone of the UN charter.
  
- Levite, Ariel E.  
Sherwood-Randall, Elizabeth  
The Case for Discriminate Force.  
SURVIVAL, vol. 44, no. 4, Winter 2002 - 2003, p. 81-97.  
<http://www.swetswise.com>  
New security challenges and the unintended consequences of precision strike have weakened Western deterrence, 'compellence' and warfighting capabilities. Democracies face increasing constraints on the use of their overwhelming military might. Contemporary adversaries are undeterred or even inspired by Western superiority. To ensure that military power remains an effective national security instrument, Western civilian and military leaders need to pursue a discriminate force strategy. This will require a paradigm shift in thinking about, preparing for, threatening, or ultimately employing military power. Such a strategy requires innovation in Western doctrine, capabilities, force structure and coalition management. Using force discriminately will reinforce deterrence, bolster diplomatic efforts and increase the effectiveness of military action, should it become necessary.
  
- Litwak, Robert S.  
The New Calculus of Pre-emption.  
SURVIVAL, vol. 44, no. 4, Winter 2002 - 2003, p. 53-79.  
<http://www.swetswise.com>  
Under the Bush administration's 2002 National Security Strategy document, military pre-emption against 'rogue states' and terrorist groups has been elevated to official doctrine. But the conditions under which pre-emption would be undertaken remain unclear. Military action against terrorist groups, such as al-Qaeda, enjoys broad international legitimacy, but that consensus breaks down over the use of force against a state violating non-proliferation norms. A comparative analysis of historical cases reveals force to be as problematic as its non-military alternatives. Inadequate intelligence, concern over collateral damage to civilian populations and the fear of triggering a broader conflict have been major constraints on the use of force to prevent the proliferation of weapons of mass destruction. In the post-11 September era, pre-emption should be a rarely invoked policy option, and successful prevention strategies, employing non-military instruments, might forestall the need to resort to it.

- MacShane, Thomas W.  
Blame it on the Romans : Pax Americana and the Rule of Law.  
PARAMETERS, vol. 32, no. 2, Summer 2002, p. 57-72.  
<http://carlisle-www.army.mil/usawc/parameters>  
The author suggests that Rome's legacy of a unified and stable world, at peace within its borders, is in modern times analogous to America. He draws this analogy of 'Pax Americana' from the period of relative peace and prosperity that has existed since World War II. McShane's thesis is built on the premise that American military power is required to establish and enforce global peace. His examination involves three key questions - when is the use of armed force legal under international law, what limits does sovereignty impose, and what is the proper application of military power. He concludes that 'Pax Americana' provides us with several useful lessons. First, that multinational intervention is almost always preferred; second, we should always use the other elements of national power before introducing the military; and finally that every outbreak does not cry out for international intervention.'
  
- Mangum, Ronald Scott  
NATO's Attack on Serbia : Anomaly or Emerging Doctrine ?  
PARAMETERS, vol. 30, no. 4, Winter 2000 - 2001, p. 40-52.  
This article does not attempt to assess right or wrong in the NATO attack on the Federal Republic of Yugoslavia. It does, however, examine the factual background and legal arguments for and against that action. And it raises questions which the international community should address in resolving the appropriateness of the use of force in humanitarian crises. Finally, it proposes guidelines which NATO and the US, if they are to be the moral leaders of the free world, can take to formalize a doctrine of humanitarian intervention.
  
- Manusama, Kenneth  
Terrorisme en zelfverdediging in de Veiligheidsraad.  
VREDE EN VEILIGHEID, jg. 30, nr. 4, 2001, p. 481-499.  
In dit artikel wordt allereerst bekeken of het recht van zelfverdediging bij daden van terrorisme in het algemeen en in de concrete situatie van de aanslagen van 11 september 2001 van toepassing is. Hierbij wordt met name teruggekeken op de praktijk van de Veiligheidsraad op het gebied van (anti)terrorisme en zelfverdediging. De twee resoluties die sinds de terroristische aanslagen in de Verenigde Staten door de Veiligheidsraad zijn aangenomen komen vervolgens aan bod. De nadruk ligt daarbij op de gevolgen van de twee resoluties voor de inhoud van het recht op zelfverdediging en de rol van de Veiligheidsraad. Het opmerkelijke wetgevende karakter van resolutie 1373(2001) kan evenmin onopgemerkt blijven.
  
- Meernik, James  
Modeling International Crises and the Political Use of Military Force by the USA.  
JOURNAL OF PEACE RESEARCH, vol. 37, no. 5, September 2000, p. 547-562.  
<http://www.swetswise.com>  
While the literature on the political use of military force by the USA has undergone tremendous growth in recent years, one crucial feature of this foreign policy activity has not been modeled - the conditions that give rise to the crises that precipitate a use of force. It is possible that many of the findings on the diversionary use of force obtain because of problems with selection effects. More uses of force may occur during certain periods simply because more crises occur during these time. Therefore, the author explains how it is possible to model crisis occurrence and the use of force to help people to better understand the role of selection effects and the salience of domestic conditions in the decision to use force. The author outlines several hypotheses regarding the influence of domestic and crisis-specific factors to predict when opportunities to use force will occur and, given some opportunity, when a president will use military force. The results demonstrate that by not

accounting for selection effects in the decision to use force by US presidents, US may have erroneously concluded that presidents use force to divert public attention.

- Moreau Defarges, Philippe  
La guerre pre-emptive.

DEFENSE NATIONALE, 58e annee, no. 10, octobre 2002, p. 228-234.

La doctrine Bush, lutte totale et permanente contre le terrorisme, se donne comme instrument majeur 'l'action militaire pre-emptive' : aneantir la menace dans l'oeuf, frapper l'ennemi avant qu'il ne puisse agir. Cette question de la guerre preventive fait partie de ces debats strategiques qui reviennent regulierement. Les principes donnent finalement une reponse ambigue : l'usage de la force ne saurait etre admissible que pour reparer un tort; en meme temps, comment interdire totalement a un Etat, ou une communaute d'Etats, de prendre l'initiative, des qu'il est sur que l'adversaire developpe des armes redoutables ? La prevention est-elle efficace ? La guerre est par nature imprevisible. Elle n'est jamais le produit d'une volonte parfaitement libre, mais le fruit d'une combinaison hasardeuse de circonstances et de calculs. La plupart des guerres pouvant etre presentees comme preventives ont echappe a leur initiateur. Pourquoi une action militaire preventive en Irak echapperait-elle aux lois multiseclaires de la puissance et de ses aleas ? Cette action ne peut etre limitee ni dans l'espace, ni dans le temps.

- Mullerson, Rein

Jus Ad Bellum : Plus ca change (le monde) plus c' est la meme chose (le droit) ?

JOURNAL OF CONFLICT & SECURITY LAW, vol. 7, no. 2, October 2002, p. 149-189.

<http://www.swetswise.com>

The article tries to look at the developments in the legal regulation of use of force in the context of changes in the world since the end of the cold war. Although in this field no new normative texts have been adopted, expectations of the world community, whether seen as legitimate or contrary to international law, differ significantly from previous practice and interpretation of law. These developments are studied in the context of the increased threat to international terrorism. The article emphasizes the need of addressing circumstances conducive to terrorism as well as responding militarily, when necessary, to terrorist attacks.

- Murphy, Ray

UN Peacekeeping in Lebanon and the Use of Force.

INTERNATIONAL PEACEKEEPING, vol. 6, no. 2, Summer 1999, p. 38-63.

A traditional peacekeeping force should not rely on the use of force to achieve its mission. However, when a party to a conflict fails to give the required level of cooperation, a decision must be made regarding what degree of force, if any, may be resorted to in the circumstances. At an early stage in the UNIFIL mission, it was decided that operation effectiveness would be curtailed in order to adhere to the principle of non-use of force. This led to criticism, not all of which was without foundation. There were occasions when UNIFIL threatened and used force as a last resort in self-defence. There are other occasions when it failed to do so and thereby invited further harassment. The experience of UNIFIL shows how the principle of non-use of force has been controversial and difficult to apply in practice. This was exacerbated by the ambiguities in the mandate and the lack of support from the Security Council. During the ONUC mission, the ground rules for the use of force changed as the mission progressed and it could be described as the first instance of 'mission creep'. This did not occur with UNIFIL, and the non-confrontational policy adopted by the Secretary-General has generally been successful.

- Myjer, Eric P. J.  
White, Nigel D.  
The Twin Towers Attack : An Unlimited Right to Self-Defence ?  
JOURNAL OF CONFLICT & SECURITY LAW, vol. 7, no. 1, April 2002, p. 5-17.  
<http://www.swetswise.com>  
This article considers the limited role of international organizations (the UN and NATO) in Operation Enduring Freedom against Afghanistan. Both organizations have played a peripheral role, legitimating but not regulating the use of force by the United States. This seems to be part of a continuing process of attempting to widen customary rights while eroding the effective powers of organizations. The consequences for collective security and the international legal order are immense.
  
- O'Connell, Mary Ellen  
Evidence of Terror.  
JOURNAL OF CONFLICT & SECURITY LAW, vol. 7, no. 1, April 2002, p. 19-36.  
<http://www.swetswise.com>  
In the hours after the 11 September attacks on the United States, some called for counter-attacks on America's enemies, regardless of any evidence of wrong-doing. Those calls were rejected and some evidence was produced linking Osama bin Laden, his organization, al-Qaeda, and the Taliban regime of Afghanistan to the attacks. The United States and United Kingdom began a bombing campaign of Afghanistan on the strength of that evidence on 7 October 2001. This article explores the law of evidence in international law. It seeks to identify what evidence is sufficient for supporting a case of self-defence to clandestine terror attacks.
  
- Ojeda, Jaime  
La doctrina Bush : guerra preventiva, dominacion mundial.  
POLITICA EXTERIOR, vol. 16, no. 90, noviembre - diciembre 2002, p. 7-16.  
A mediados de septiembre, Estados Unidos adopto su nueva estrategia de seguridad nacional, que rompe con los principios de contencion y disuasion establecidos hace mas de cincuenta anos.
  
- Paecht, Arthur  
Kosovo as a Precedent : Towards a Reform of the Security Council ?  
CIVILIAN AFFAIRS COMMITTEE (NATO Parliamentary Assembly), 1999, 28 p.(491.6/19).  
Is it possible to make the rule of law a pillar of democracy internally while flouting it internationally ? This is the fundamental question why the legality of NATO's intervention in Kosovo cannot be regarded as a secondary issue. The Rapporteur tackles his subject in five stages. The first is a brief restatement of international law regarding the use of force. The Rapporteur then makes a detailed analysis of the legal justification invoked by the NATO countries in support of their intervention and demonstrates its deficiencies. Extending this discussion, he then makes a quick analysis of the April 1999 Strategic Concept in order to highlight its ambiguities as regards relations between the Alliance and United Nations. He then draws attention to a number of recent trends in international practice which reveal a gradual change of view at universal level regarding relationship between 'state sovereignty' and 'sovereignty of individuals' - in other words, the intangibility of frontiers and the protection of human rights. Having established the ambiguity and incompleteness of international law on this basis, he then suggests some lines of discussion with a view to establishing a proper legal framework for a right of humanitarian intervention.

- Record, Jeffrey  
 A Note of Interests, Values, and the Use of Force.  
 PARAMETERS, vol. 31, no. 1, Spring 2001, p. 15-21.  
<http://carlisle-www.army.mil/usawc/parameters>  
 The author reviews the age-old debate as to when and why we exercise the use of force. Should it be exercised only for the defense of US interests or to promote American values ? His examination of the 'realist' versus 'idealist' philosophical platforms undertaken by the nation's leadership leaves the reader pondering - is it an either-or debate, or are values and interests inextricably linked ?
  
- Reichberg, Gregory  
 Syse, Henrik  
 Humanitarian Intervention : A Case of Offensive Force ?  
 SECURITY DIALOGUE, vol. 33, no. 3, September 2002, p. 309-322.  
<http://www.swetswise.com>  
 The distinction between offensive and defensive force is central to modern international law. As developed in the interwar years and later codified in the United Nations Charter, international law has strictly banned resort to offensive force, the only possible exception being operations mandated by the Security Council. In the just war tradition (JWT), by contrast, some kinds of offensive force are permitted, including humanitarian interventions. This article compares these two different ways of understanding the distinction between offensive and defensive force. It suggests that there is a need to specify in which cases the offensive use of force may be legitimate for humanitarian purposes, and it does so by drawing in the just war idea of 'reaction against wrongdoing'. The concept of a reactive use of force, inspired by St. Augustine and the subsequent JWT, is thus central to the article's argument.
  
- Roberts, Adam  
 From San Francisco to Sarajevo : The UN and the Use of Force.  
 SURVIVAL, vol. 37, no. 4, Winter 1995 - 1996, p. 7-28.  
 From the 1950 Korean War to Operation Deliberate Force in Bosnia in 1995, the practice of the United Nations regarding the use of force for UN-approved objectives has differed markedly from the UN Charter provisions. The two principal accepted frameworks for such action have been enforcement in support of a victim of aggression, and impartial peacekeeping based on consent. However, events in the Congo, Namibia, Somalia and former Yugoslavia have pointed to the need for, and even the possibility of, a conceptual framework for limited military action which is distinct from the traditional notions of peacekeeping. Recognition of such a framework, with all its problems, does not imply general advocacy of a more coercive form of UN peacekeeping, but rather acceptance that in a few extreme situations there may be a need for the UN, its member-states, or regional alliances to go beyond the traditional limits of peacekeeping operations.
  
- Roberts, Adam  
 Willing the End but Not the Means.  
 WORLD TODAY, vol. 55, no. 5, May 1999, p. 8-12.  
 Are threats or the use of military force against a sovereign state in support of the declared aims of the UN Security Council legitimate when there is no explicit authorisation in a Security Council resolution ? Are such threats wise ? And why do UN sanctions, widely seen as an alternative to force, often lead to it ? In 1998-99 these questions have arisen in crises over Iraq and Kosovo. Western political leaders have made little attempt to address them openly.

- Ronzitti, Natalino  
 Lessons of International Law from NATO's Armed Intervention Against the Federal Republic of Yugoslavia.  
 INTERNATIONAL SPECTATOR, vol. 34, no. 3, July - September 1999, p. 45-54.  
 The author discusses the various official and academic arguments put forward regarding the legality of NATO's military action, undertaken without authorisation from the UN Security Council, and the problems associated with the effort to establish a convincing doctrine of humanitarian intervention. He examines how the search for a new legitimacy of international actions against countries that violate fundamental human rights can be satisfied without undermining the essential role of the UN System. In the concluding part of the article, the author argues in favour of the Security Council giving a general authorisation - as opposed to a case-by-case one - to regional organisations to undertake enforcement actions, while maintaining the ultimate power to stop them.
  
- Seker, Aylin  
 The Fallacy of Multilateralism.  
 PERCEPTIONS, vol. 4, no. 2, June - August 1999, p. 196-213.  
 Underlying the central arguments of this article are these overriding questions : What was the justification for the use of military force in the Gulf War and its aftermath ? What precedents were set ? Has the UN lost credibility or vindicated its status as the organ of the international community with primary responsibility for international peace and security ? And finally, what lessons can be drawn from the UN's handling of the Gulf crisis and its aftermath for the future use of military force ? Is unilateralism really dead ?
  
- Sizoo, Jan  
 Kosovo en het dreigen met geweld.  
 INTERNATIONALE SPECTATOR, jg. 56, nr. 6, april 2002, p. 206-211.  
 The author, a former ambassador of the Kingdom of the Netherlands in Belgrado, returns to the Kosovo crisis in 1998-1999 and notes that most scholars in international law would agree that NATO's military force against the Federal Republic of Yugoslavia in Spring 1999 was illegitimate, being at variance with the UN Charter. He then argues that the preceding threat of force by NATO, of 28 May 1998, against the FRY was equally illegitimate. Also, NATO's threat to use force violated political commitments solemnly adopted at various occasions by OSCE participating states since 1975. Finally, he points to the contrasts between the way in which Western countries responded to the atrocities committed by Serbs in Kosovo in 1998/1999, leading to the threat and use of force by NATO, in comparison with their response to the atrocities committed by Croats in the Croatian Serb area of Krajina in the Summer of 1995, which was lenient.
  
- Stevenson, Charles A.  
 The Evolving Clinton Doctrine on the Use of Force.  
 ARMED FORCES AND SOCIETY, vol. 22, no. 4, Summer 1996, p. 511-535.  
 The Clinton Administration has developed and applied a fairly detailed set of guidelines on the use of force. The Clinton criteria are derived in large measure from official military doctrine promulgated by Gen. Colin Powell, but they have been modified particularly in light of US experience in Somalia. The current consensus doctrine calls for overwhelming force in defense of vital national interests in order to achieve a quick, decisive victory with low US casualties. When important but not vital interests are involved, and costs and risks are commensurate with those interests, limited military means may be used for limited political objectives. In all cases, military operations should have clearly defined and achievable missions, with measurable milestones and an exit strategy to guard against mission creep. Public and congressional support is deemed advisable but not necessary. This article

illustrates the application of this doctrine in Somalia, Haiti and Bosnia.

- Sur, Serge  
Aspects juridiques de l' intervention de pays membres de l' OTAN au Kosovo.  
DEFENSE NATIONALE, 55eme annee, no. 12, decembre 1999, p. 44-62.
  
- Tomes, Robert  
Operation Allied Force and the Legal Basis for Humanitarian Interventions.  
PARAMETERS, vol. 30, no. 1, Spring 2000, p. 38-50.  
This article reviews international law arguments against NATO's bombing campaign, suggests that the operation should be considered legitimate, and concludes with a jus cogens argument - similar to a natural law argument - in support of intervention to stop gross violation of human rights.
  
- Valki, Laszlo  
Kosovo, International Law and Humanitarian Intervention.  
PERSPECTIVES, no. 15, Winter 2000 - 2001, p. 45-67.
  
- Waart, Paul de  
Rechtmatigheid van humanitaire interventie.  
INTERNATIONALE SPECTATOR, jg. 54, nr. 5, mei 2000, p. 232-237.  
The author argues that the use of force for humanitarian purposes by states without a mandate of the Security Council or a recommendation of the UN General Assembly against a state that oppresses its people - humanitarian intervention - does not require a new exception to the prohibition of the use of force in the UN Charter. Current international law and human rights law do not rule out such an intervention in time of international public emergency, albeit under strict conditions only. It also provides the basis for defining the concept of humanitarian catastrophe as a massive and systematic violation of non-derogable civil and political rights, including the right of self-determination of peoples. The real trouble is the absence of an objective and effective international control of the observance of the conditions for a legitimate humanitarian intervention by states.
  
- Weller, Marc  
The US, Iraq and the Use of Force in a Unipolar World.  
SURVIVAL, vol. 41, no. 4, Winter 1999 - 2000, p. 81-100.  
<http://www.swetswise.com>  
In Operation Desert Fox, and during the aerial bombardment of Iraq that has followed, the United States and the United Kingdom argued that they were acting to enforce the 'will' of the UN Security Council, that they were responding to a 'material breach' of the cease-fire that ended the 1991 Gulf War, and also that they were pre-empting Iraq's future potential use of weapons of mass destruction. Neither of the first two arguments stands up to legal scrutiny, while the third suggests a doctrine of preventive war that carries with it extremely dangerous implications for international relations. Rather than strengthening the existing structures of international order, the armed action against Iraq has undermined them, and has unacceptably tainted the development of the doctrine of humanitarian intervention in general international law.

- White, Nigel D.

The Legality of the Threat of Force Against Iraq.

SECURITY DIALOGUE, vol. 30, no. 1, March 1999, p. 75-86.

The legal basis of such threats against Iraq and their enactment involves an assessment of whether the UNSC can authorize them under Article 42 of the UN Charter, and whether this is incompatible with Article 2 (4), which prohibits threats and the use of force. An imperfect decentralized military option has evolved for use by the USA and Britain, in particular. It is also visible in the 'safe heavens' and no-fly zone created in the north of Iraq for the Kurds. But the push towards intervention has gathered momentum, and a second no-fly zone has been created in southern Iraq. Humanitarian motives have been invoked. The military activities threatened in 1998 were directed at enforcing UNSC resolution 687 of April 1991, which included provisions for the removal of weapons of mass destruction under international supervision (UNSCOM). Iraq, however, failed to comply fully with these terms. The frustration leading to threats and airstrikes was understandable - but it did not necessarily make them legal. States may seek to use force because they cannot obtain a UNSC mandate and because 687 can no longer provide one after the initial action against Iraq in 1991. All the same, there remains no clear resolution authorizing the use of force or the threat of it - however attractive a policy based on the latter might appear.

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