

Humanitarian intervention in light of ethical and legal foundations of International Law

Intervención humanitaria a la luz de los fundamentos éticos y legales del derecho internacional

Abstract: Discussions on humanitarian intervention are far from reaching a consensus, mainly due to the tenuous line between international politics and international law. The difficulties in reconciling the normative and ethical aspects that enable humanitarian intervention make this a complex issue. Given this scenario, this qualitative case study based on bibliographical-documentary research analyzes (i) the historical context of humanitarian interventions in the 1990s, (ii) the five main cases of (non)intervention in the 1990s (Bosnia and Herzegovina, Somalia, Rwanda, Haiti and Kosovo), and (iii) the ethical and legal foundations that justify humanitarian intervention.

Keywords: humanitarian intervention; international law; united nations; peace missions.

Resumen: La discusión sobre la intervención humanitaria sigue sin haber consenso, especialmente por la línea endeble entre la política internacional y el derecho internacional. Esta es una cuestión compleja dadas las dificultades de conciliar los aspectos normativos y éticos que permiten la intervención humanitaria. Ante este desafío, este artículo tiene como objetivo analizar el contexto histórico de las intervenciones humanitarias en los años 1990, los cinco casos principales de (no) intervención en los años 1990: Bosnia-Herzegovina, Somalia, Ruanda, Haití y Kosovo, y los fundamentos éticos y legales que las justifican. Para ello, esta investigación utiliza el método cualitativo y realiza un estudio de caso, mediante la investigación bibliográfica-documental.

Palabras clave: intervención humanitaria; derecho internacional; Naciones Unidas; misiones de paz.

Bárbara Thaís Pinheiro Silva 

Pontifícia Universidade Católica de Minas Gerais (PUC Minas)
Belo Horizonte, Minas Gerais, Brasil
btpsilva07@gmail.com

Danny Zahreddine 

Pontifícia Universidade Católica de Minas Gerais (PUC Minas)
Belo Horizonte, Minas Gerais, Brasil
dannyzahreddine@gmail.com

Received on: June 06 2022

Approved on: Oct. 10 2023

COLEÇÃO MEIRA MATTOS

ISSN on-line 2316-4891 / ISSN print 2316-4833

<http://ebrevistas.eb.mil.br/index.php/RMM/index>



1 INTRODUCTION

Humanitarian interventions carried out by military operations in conflicts and civil wars challenge the international society (Altman; Wellman, 2008; Glanville, 2014). While they represent a necessary resource for putting human rights norms into practice, there is no consensus regarding their application since their legitimizing precepts are always questioned. Although humanitarian, these interventions face several obstacles for their actualization, the main one being State sovereignty (Brown, 1992; Johansen, 1996).

Since the last decade of the 20th century, the use of military interventions for humanitarian purposes has provoked great discussions, especially about their permission in the light of international norms (Brownlie, 1963). Likewise, the debates on these controversies permeate the normative issues of international law on its adoption, whether with or without the approval of the United Nations (UN) (Ayooob, 2001).

Discussions about the extent to which international law should regulate humanitarian intervention still persist in the face of increasing humanitarian crises, provoking the international community to speak out in an attempt to respond to these situations. The United Nations tries to give a new look to humanitarian interventions to resolve the normative clashes that put them in check (Betts, 1994; Doucet, 2017).

The controversy regarding humanitarian interventions results from significant conflicts between the legal norms of the UN Charter and contemporary international law since some international norms—human rights and humanitarian and criminal law—stress the importance of humanitarian interventions, whereas others oppose it, such as the principle of sovereignty and non-intervention (Altman; Wellman, 2008).

The purpose of the three branches of international law above essentially refers to protecting human life and the dignity of persons from various perspectives. Thus, it is unsurprising that some norms, although with different formulations, share the same essence. Therefore, international human rights law aims to protect human life in all contexts, whereas international humanitarian law aims to combat unnecessary suffering in war scenarios and ensure that individuals are held accountable for war crimes. Likewise, international criminal law aims to ensure the due imputation of international crimes to their respective perpetrators. Thus, these law branches implicitly require humanitarian interventions in the face of massive human rights violations (Betts, 1994; Doucet, 2017).

In 1948, the UN General Assembly promulgating the Universal Declaration of Human Rights inaugurated the new order of international human rights law, followed by several international treaties widely ratified by the members of the United Nations (Fundação das Nações Unidas para a Infância, 1948; Jokic, 2003). According to the Comitê Internacional da Cruz Vermelha (2002), among these legal documents, the normative framework of international humanitarian law took shape with the publication of the four Geneva Conventions of 1949 and the treaties on the repression of genocide and torture, which emphasized the importance of individuals' criminal responsibility. Likewise, international criminal law

reinforces the importance of competent international criminal courts to prosecute and try people who have committed war crimes, those against humanity, genocide, and aggression (Danish Institute of International Affairs, 1999).

When analyzing the framework of legal norms that aims to guarantee human rights and, thus, human dignity, the practice of humanitarian military interventions may be legitimate and, perhaps, even required (Altman; Wellman, 2008). Chapter VII of the UN Charter authorizes the United Nations Security Council (UNSC) to adopt the necessary measures, which include military action—even without the consent of the involved State—in the face of threats and violations of peace or acts of aggression (Article 39), which means, in short, violations of human rights (Brierly, 1963; Doucet, 2017). On the other hand, provisions developed throughout the Charter and others in the international normative framework disfavor humanitarian interventions; the main ones being those on state sovereignty, non-intervention, the peaceful settlement of disputes, and the non-use of force (Betts, 1994; Nadin, 2018).

The UN Charter upholds the need for cooperation to promote and encourage respect for human rights and fundamental freedoms (Article 55) and stresses the duty of all States to take joint decisions to achieve this purpose (Article 56). Similarly, Article 2(1) of the Charter states that the UN is founded “on the principle of the sovereign equality of all its Members” and states, in paragraph 7, that the UN is unable “to intervene in matters which are essentially within the domestic jurisdiction of any state,” with the exception of implementing UNSC measures on the basis of Chapter VII of the Charter (Johansen, 1996; Organização das Nações Unidas, 1945).

Likewise, Article 2(3) and Chapter VI encourage States to settle their disputes peacefully, i.e., without the use of force. Article 2, paragraph 4, states that UN members may not threaten or use force against the “territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,” which presupposes the prohibition of military interventions for humanitarian purposes without authorization from the Security Council. Finally, the UN Charter establishes as its purpose the development of “peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote” (Article 55) (Heraclides; Dialla, 2015; Organização das Nações Unidas, 1945).

In short, we will find that—even in the face of normative impasses—individuals, governments, and international organizations have the moral duty to individually or collectively take reasonable measures to prevent or stop widespread and serious human rights violations (Ayoob, 2001; Danish Institute of International Affairs, 1999).

Considering the importance of the subject, this study will describe some of the interventions coordinated under the tutelage of the United Nations with the general objective of serving as a guide to academia in the face of the imbroglions related to the topic. Thus, it has the following specific objectives: (i) to analyze the historical context of humanitarian interventions in the 1990s; (ii) list the five main cases of (non)intervention in the 1990s—Bosnia and Herzegovina, Somalia, Rwanda, Haiti, and Kosovo; and (iii) describe the ethical and legal foundations that justify humanitarian interventions.

For this study, a qualitative methodology was decided on since it aims to explain the grounds that legitimize humanitarian military interventions based on ethical and legal postulates and the need to reconcile the conflicting norms that make up the international normative framework on the subject. Moreover, to gather detailed and systematic information on the phenomenon, a case study was adopted as a methodological tool that emphasizes the contextual understandings arising from the humanitarian interventions in the 1990s—Bosnia and Herzegovina, Somalia, Haiti, and Kosovo—and the non-intervention in Rwanda. Likewise, it is noteworthy that this bibliographic-documentary research focuses on primary sources, such as UNSC resolutions and reports on the topic. This study also used periodicals and other materials.

Finally, we emphasized that this study is justified since it assesses one of the most current and delicate topics of international relations: humanitarian interventions in the light of the ethical and legal foundations of international law. Therefore, it refers to these operations as the main instrument of the UN to promote international peace and security. Thus, this research addresses an essential topic, especially due to its impact on international and domestic politics. This study can explain fundamental points that will benefit the entire academic community by providing qualified knowledge on the subject.

2 HISTORICAL CONTEXT

Soon after the end of the Cold War, the path for greater action by the Security Council essentially arose due to the collapse of the bipolar order, opening space for closer cooperation among state actors and strengthening the aspirations woven by the “legislators” of the UN Charter, i.e., multilateral cooperation in international peace and security matters (Brierly, 1963; Organização das Nações Unidas, 1945). The Security Council authorized several peacekeeping operations in the most unstable regions for the international order, increasing the scope and quantity of operations under the “UN umbrella” and pressuring human, financial, and operational resources (Cunliffe, 2017; Nadin, 2018).

In the 1950s, traditional peacekeeping operations began just when the Secretary-General, General Dag Hammarskjöld, established a plan for the United Nations called the Emergency Force in the Sinai (Cunliffe, 2017). By this plan, the U.N. troop mission sought to mediate warring parties in conflicts, oversee possible truces, and monitor police ceasefire lines. This context required the consent of those involved in the conflict to authorize the action of the “blue helmets” (UN soldiers) who were supposed to act impartially and use force only for self-defense (Diehl, 1994).

Unlike the first generation of peacekeeping missions, their second generation¹ exceeded monitoring ceasefire lines as it also encompassed non-military tasks (Diehl, 1994). At that time,

1 The first generation of peacekeeping missions had a mandate under Chapter VI of the UN Charter that was lightly armed and operated under limiting rules of engagement. First-generation operations were restricted to the consent of host nations, impartiality, and the non-use of force by United Nations troops. Second-generation peacekeeping missions supported post-conflict political transitions with no increase in permission to use military force.

the Security Council adopted economic sanctions against states that violated human rights under Chapter VII. The use of military force also occurred in a more robust way since it exceeded the self-defense of the troops in missions (Cunliffe, 2017; Damrosch, 1993).

It should be noted that the Gulf War served as a precedent for the Security Council when it authorized the coalition of UN member states—led by the United States (US)—to use all necessary means to expel Iraqi forces from Kuwait. Therefore, new cases received “special” attention from the United Nations during the 1990s, five of which were the most emblematic, which justifies their investigation (Bowett, 1964; Henkin *et al.*, 1993).

Notably, in the five cases that will be examined—deterrence of attacks against security areas in Bosnia and Herzegovina (Bosnia); political reconstruction in Somalia; maintaining public order in Rwanda after its genocide; restoration of the Haitian elected government in 1994, and deployment of the Force in Kosovo after the NATO bombing—the UNSC authorized the use of force beyond self-defense (Goodman, 2006; Henkin *et al.*, 1993; Heraclides; Dialla, 2015).

2.1 Cases of humanitarian intervention in the 1990s

2.1.1 Bosnia

Following the war in the former Yugoslavia in 1991 and the declaration of independence of Slovenia and Croatia, the Security Council determined the creation of a United Nations Protection Force (UNPROFOR) in Croatia (Wedgwood, 1999). Thus, in 1992 the fighting spread to Bosnia, making it independent, relying on Serbian and Croatian support against the Bosnian government. In April of the same year, Serb forces waged a military campaign against Bosnian Muslim civilians and the Security Council authorized the extension of UNPROFOR to Bosnia to stop it. The UN recognized the independence of Croatia, Slovenia, and Bosnia, internationalizing an initially domestic conflict (Lebl, 2014).

The Council jurisdiction under Chapter VII extends only to situations that threaten or violate peace or configure an act of aggression, which presupposes a scenario of international armed conflict (Diehl, 1994). Thus, the UN considered it more comfortable to deal with the conflict in former Yugoslavia by considering it international rather than domestic. Otherwise, it would be outside the jurisdiction provided for in Article 2, paragraph 7, of the Charter of the United Nations (Best, 1994; Lebl, 2014; Organização das Nações Unidas, 1945).

Then, the UNPROFOR mandate was expanded to include protecting the Sarajevo airport and delivering humanitarian aid to Bosnia. In the face of increasing attacks—a process of ethnic cleansing by Serb forces against the Bosnian Muslim population—the Council condemned the Serbian atrocities and established a safe area for Muslims despite the silence of the UNPROFOR mandate on this. Thus, Security Council Resolution no. 836 of 1993 mandated the use of force to deter attacks on security areas, occupy key points, and continue humanitarian assistance (Heyse, 2015).

The Council also authorized UNPROFOR to take all measures necessary for self-defence, including the use of force, in response to bombardment of security areas or armed incursions into them by either party and authorized Member States and regional organizations, such as NATO, to take all necessary measures to support UNPROFOR in its mandate (Heyse, 2015; Wedgwood, 1999).

In response to the mass killings, torture, and rapes that characterized the conflict in Bosnia, the UNSC established the *ad hoc* International Criminal Tribunal for former Yugoslavia under Chapter VII to prosecute individuals accused of violating international humanitarian law (Diehl, 1994; Lebl, 2014). However, considering the reluctance of UN “soldiers” to use force against the Serbs, the UN Organization found itself in a position of international embarrassment. Hence, in late 1999, Secretary-General Kofi Annan issued a report assessing the UN failure to prevent the Muslim massacre in Srebrenica after UNPROFOR troops had abandoned security areas (Klose, 2016).

2.1.2 Somalia

The collapse of Mohamed Siad Barre’s government in January 1991 sparked a civil war between a faction led by Ali Mahdi and another by General Mohamed Farah Aidid. Faced with this due to internal conflicts and failed state institutions, factions seized supplies, making it difficult for the civilian population to access food resources and generating a starvation crisis (Malito, 2017).

With this in mind, the international community debated whether the UN could act by a military operation without the consent of the involved parties to ensure the delivery of humanitarian supplies during an internal armed conflict. Given the severity of the conflict in Somalia, the Security Council considered it important to intervene in the country to contain internal deterioration and increasing civilian casualties (Diehl, 1994; Malito, 2017).

As the members of the Council have argued, this situation threatened international peace and security. Thus, in light of Chapter VII, the UNSC decided on a general arms embargo and created a UN security force to ensure effective humanitarian assistance by the United Nations Operation in Somalia (Malito, 2017).

Initially, the operation sent unarmed military personnel to monitor a ceasefire agreement between Mahdi and Aidid. Then, it established a security force to enable the operation of humanitarian organizations, authorizing the U.S.-led multinational coalition, known as the United Task Force, to use all means necessary to establish a safe environment for humanitarian aid operations in Somalia (Malito, 2017). It also allowed the use of force beyond self-defence—departing from the traditional framework of first-generation peacekeeping operations—due to violations of international humanitarian law (IHL) (Goodman, 2006). However, fearing that the humanitarian intervention in Somalia would be seen as a precedent, the Council stressed its uniqueness, deteriorating, complex, and extraordinary situation requiring an exceptional response (Cunliffe, 2017; Menon, 2016).

After this operation, several others aimed to guarantee humanitarian assistance, the ceasefire between factions, the reconstruction of the Somali political and administrative apparatus, the capture of General Aidid, among other measures (Heyse, 2015; Klose, 2016).

2.1.3 Rwanda

In early 1994, the UN questioned whether it could use military force to oppose the outbreaks of genocide in Rwanda. In the previous year, the Organization had sent an observation mission to Uganda to monitor its turbulent border with Rwanda filled with attacks by the Rwandan Patriotic Front (Kuperman, 2001).

The United Nations Assistance Mission in Rwanda was established in 1993 to structure a government following a peace agreement negotiated in Tanzania. Rwanda had been ruled by a single party headed by the ethnically Hutu Maj. Gen. Juvénal Habyarimana since 1973. After his death, a militia unleashed a campaign of genocide against the population, provoking a civil war between the Tutsi and Hutu ethnic groups that began in April 1994 (Klose, 2016).

The commander of the United Nations Assistance Mission in Rwanda, Romeo Dallaire, warned the UN headquarters that a massacre was planned, but the order he received was to avoid preventive measures against the genocide since the Security Council had cut its contingent of soldiers from 2000 to 270 people at that time. The U.S. delegation also resisted characterizing the situation as genocide as they feared increasing the obligations listed in the Genocide Convention (Kuperman, 2001).

Following the recommendation of Secretary-General Boutros-Ghali in 1994, the Security Council adopted Resolution 918, which approved an expanded the mandate for the United Nations Assistance Mission in Rwanda, including the deployment of more than 5,000 troops to protect displaced persons and refugees and provide security for humanitarian areas and relief operations (Kuperman, 2001). As in Bosnia, the Security Council established the Criminal Tribunal for Rwanda to prosecute war criminals, establishing a commission of experts to examine violations of international humanitarian law, including genocide (Heyse, 2015; Klose, 2016).

Many believe that a swift UN action to combat the violence at the beginning of the genocide could have prevented the deaths of thousands of people and the failure of the international community to respond to the crisis in Rwanda (Diehl, 1994). Secretary-General Kofi Annan in December 1999 produced a report on the UN conduct in Rwanda, criticizing its actions. Similarly, the Organization of African Unity produced a report ratifying Kofi Annan's positions (Klose, 2016).

2.1.4 Haiti

During the Cold War, precisely from 1946 to 1986, Haiti lied under a dictatorial rule after the overthrow of Jean Duvalier in February 1986. It had several provisional governments, being governed by five presidents in six administrations from 1986 to 1991. Its first federal

executive election was held in December 1990, which elected Jean Aristide, who was ousted by a military coup months later. In view of this, in September 1993, UN Resolution no. 867 established the United Nations Stabilization Mission in Haiti, authorizing the deployment of 20,000 peacekeepers from the following year onward, after sending a mission in 1993 to monitor human rights violations in Haiti (Hunt, 2015).

As the situation worsened, the Council imposed economic sanctions on the basis of resolution 841 of 1993. In view of the worsening human rights violations, in July 1994, the Council authorized for the first time the use of force to overthrow a government (Brownlie, 1963; Damrosch, 1993). Resolution no. 940 of 1994, with 12 votes in favor and two abstentions (Brazil and China), authorized member states to use all necessary means to facilitate the removal of Haitian military rulers and the restoration of its legitimate authorities (Heyse, 2015).

The U.S. then reached an agreement with Haitian political leaders to ensure the peaceful entry of U.S. troops. In 1995, a U.S.-led coalition handed over leadership responsibility for mediating the conflict to its Stabilization Mission, as mandated by Council Resolution no. 975 (Brownlie, 1963; Damrosch, 1993). Municipal and parliamentary elections were then held in 1995, which elected a new president, René Préval.

In early 1996, the United Nations Stabilization Mission in Haiti was reduced. The apparent success of the operation in Haiti shows a series of difficulties regarding the legality of that military intervention, especially the role of the great powers to restore democracy in fragile countries without international armed conflicts (Hunt, 2015).

Then, from 1996 to 1997, the United Nations Support Mission in Haiti was established in accordance with UNSCR 1063 of 1996, with a limited mandate: advising the Haitian authorities on the professionalization of the Haitian National Police; assisting the Haitian authorities in maintaining a safe and stable environment and coordinating the activities of the United Nations system to promote institutional strengthening, national reconciliation, and economic rehabilitation. After two extensions, the mandate of the United Nations Stabilization Mission in Haiti expired on 31 July 1997 (Heyse, 2015).

This was followed by the establishment of the third series of UN peacekeeping operations in Haiti, the United Nations Transition Mission in Haiti, established by UNSCR 1123 of 1997, with an end date of Nov. 30, 1997. It aimed to assist the Haitian government in professionalizing its National Police. They trained the specialized units of the police forces to improve their effectiveness and favor institutional strengthening, national reconciliation, and economic rehabilitation. The United Nations Stabilization Mission in Haiti was succeeded in mid-1997 by the United Nations Civilian Police Mission in Haiti (Heyse, 2015).

The main task of the United Nations Civilian Police Mission in Haiti was to assist the supervision and training of specialized police units, guide their performance in daily tasks, and maintain close coordination with national police technical advisors funded by the United Nations Development Program and bilateral donors. It was succeeded by the International Civilian Support Mission in Haiti in 2000 (UN General Assembly Resolution no. 193 of 1999) to consolidate the

United Nations Civilian Police Mission in Haiti results and reinforce respect for human rights and the institutional effectiveness of Haitian politics and the judiciary (Hunt, 2015).

2.1.5 Kosovo

Kosovo was a province of Serbia with different ethnicities in its territory, among them Muslims and Albanians, who constituted 90% of its population. It was considered an important part of Serbia due to the holy sites of the Orthodox Church on its territory, which failed to prevent Slobodan Milosevic, the Yugoslav president in the late 1980s, from stripping Kosovo of its—albeit limited—autonomy and launching a campaign of discrimination against Albanians in the region (Charney, 1999; Wedgwood, 1999).

Many Albanians advocated Serbian independence, supported by the Kosovo Liberation Army on the basis of the principle of self-determination of peoples. In response, the Yugoslav and Serbian governments engaged in violence against the population. Thus, the Security Council ordered an arms embargo on these countries (Gromes, 2019).

However, as the situation increasingly worsened, Secretary-General Kofi Annan, in a June 1998 speech, suggested that some form of military intervention might be justified. In the face of violations of human rights and international humanitarian law, it urged the parties to enter into dialogue and reach a peaceful solution as per Chapter VII of the UN Charter (Henkin, 1999).

In the face of diplomatic failures, on March 24, 1999, NATO launched, without authorization from the Security Council, an air strike against Serbia with the purpose of stopping armed violence against Albanians living in Kosovo (Wedgwood, 1999). In the view of the U.S. government, the NATO attitude corresponded to a moral imperative, mainly because the authorization of the permanent members of the Security Council would be impossible due to the vetoes of Russia and China (Bowett, 1964; Glanville, 2014). NATO, however, failed to stop human rights violations in Kosovo. On the contrary, the situation was made more delicate by acts of terror, rape, and murder by Yugoslav and Serbian forces, precipitating a massive humanitarian and refugee crisis in the region (Charney, 1999; Wedgwood, 1999).

Meanwhile, Russia, Belarus, and India tabled a draft resolution at the UNSC condemning the attacks undertaken by NATO. The Council rejected the resolution by three votes in favor (China, Namibia, and Russia) and 12 against, with no abstentions. Moreover, Kofi Annan said that NATO violated the UN Charter by acting without the authorization of the Security Council (Henkin, 1999; Wedgwood, 1999).

In 1999, Milosevic and other Serbian leaders were indicted by the International Criminal Tribunal for former Yugoslavia for war crimes and those against humanity, including the murder, deportation, and persecution of Kosovo Albanians on political, racial, and religious grounds. However, NATO was also accused of violating international humanitarian law against the civilian population by its attacks with cluster bombs and depleted uranium projectiles (Charney, 1999; Wedgwood, 1999). In the same year, the Security Council issued Resolution

no. 1244 authorizing the UN Secretary-General to establish a United Nations Interim Administration Mission in Kosovo, which would take over the civilian administration and economic reconstruction of the province until such time as autonomous institutions could be developed. Thus, the resolution called for the promotion of “substantial autonomy and self-government” for Kosovo (Gromes, 2019).

3 PRECEPTS THAT FAVOUR HUMANITARIAN INTERVENTION

The activities of the United Nations Security Council raised debates on the legal and ethical issues regarding the practice of humanitarian interventions in the 1990s. In other words, UNSC humanitarian interventions face several dilemmas (Betts, 1994; Henkin *et al.*, 1993).

Humanitarian interventions with or without the consent of the Council and other recent phenomena in armed conflicts have raised a multitude of doubts concerning the challenges international law must face, especially regarding the conflict of legal norms, woven into the UN Charter, that sometimes favor military intervention for humanitarian purposes and sometimes vehemently prevent it (Henkin *et al.*, 1993).

The legal issues evincing the impasse justifying humanitarian interventions are difficult to resolve since they highlight many conflicts between the legal norms of the UN Charter and contemporary international law (Diehl, 1994). These normative conflicts also reflect the conflicts of ethical principles that underpin these norms. Indeed, as suggested by the five cases in this study, legal questions about humanitarian intervention are related to ethical issues (Abi-Saab, 1984; Hill, 2009).

Thus, it is necessary to understand the ethical and legal precepts that should guide any legal discretion of the UNSC on humanitarian intervention. In other words, it is essential to understand the ethical and legal precepts that provide a new view of humanitarian interventions based on the norms of international law underpinning them (Diehl, 1994; Klose, 2016). It should be noted that these are principles endorsed by international law (including the provisions listed in the UN Charter), the norms of international human rights law, and international humanitarian law (Altman; Wellman, 2008; Hunt, 2015).

3.1 Ethical aspects

3.1.1 *Principle of the human family*

The United Nations Charter and international human rights law stress that all individuals should be considered members of the human family regardless of race, ethnicity, nationality, sex, religion. The very preamble of the UN Charter states that the peoples of the United Nations agree to tolerance and peaceful coexistence (United Nations, 1945). For its part, the preamble of the Universal Declaration of Human Rights recognizes the dignity, equality, and inalienable

rights of all members of the human family (Fundo das Nações Unidas para a Infância, 1948; Klose, 2016).

Thus, the principle of the human family grounds many forms of international law and subsidizes various ethical principles that derive from it since it defends unity and cooperation among international community members (Abi-Saab, 1984; Hunt, 2015). Moreover, cultural, political, religious, and ethnic diversity among human communities fails to preclude unity among them, especially when community relations are established on the basis of the principle of the human family (Brown, 1992). Thus, the UN Charter stresses that diversity is possible in the context of a global neighbourhood by elucidating that “we the peoples of the United Nations [must] practice tolerance and live together in peace with one another as good neighbours.” It also indicates that the self-determination of peoples must ground the development of friendly relations among nations (Article 1) (Organização das Nações Unidas, 1945, our addition; Vik, 2015).

Concerning the 1966 International Covenant on Civil and Political Rights, it determines that all peoples have the right to self-determination, i.e., they have the competency to define the political status of their Nation and establish guidelines for its economic, social, and cultural development (Article 1) (Brasil, 1992). Likewise, the International Covenant on Economic, Social and Cultural Rights states that persons belonging to ethnic, religious, or linguistic minorities should be allowed to live in communities with other members of their group (article 27) (Brasil, 1992). However, it should be emphasized that such rights will only be possible under the respect for the human rights of all individuals without discrimination. Therefore, self-determination rights and cultural rights must be exercised considering the respect for all human beings as members of one human family (Hunt, 2015).

Finally, the Universal Declaration of Human Rights claims that all must act toward one another in a spirit of brotherhood (Article 1) for “everyone has duties to the community in which the free and full development of their personality is possible.” (Article 29) (Fundo das Nações Unidas para a Infância, 1948). This presupposes respect for all members of the human family, which corresponds to all individuals on the globe (Nadin, 2018). If the inherent Human Dignity of all individuals supports the ethical principle of the human family, the principle of the Dignity of the Human Person states that all beings are born free and equal in dignity and rights.

3.1.2 *Principle of Pacta Sunt Servanda*

States must fulfill their obligations as set out in the treaties in which they reaffirmed their binding obligations in accordance with the principle of *pacta sunt servanda*. Thus, the UN Charter preamble stresses that the United Nations peoples are determined to “establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained” (Organização das Nações Unidas, 1945). Thus, the UN aims to establish the peaceful settlement of disputes “in conformity with the principles of justice and international law” (Article 1) (Hill, 2009; Organização das Nações Unidas, 1945; Nadin, 2018).

It is also worth examining the Vienna Convention on the Law of Treaties, which states: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith” (Article 26). Since the Treaties create expectations on signatories, their non-observance can even damage future negotiations and breach trust. Thus, it is possible to affirm that international law treaties have a sanctity that prohibits their violation (Johansen, 1996; Vik, 2015).

3.1.3 Principle of the humanitarian conduct of war

The principle of unity in diversity (human family) shows the importance of peaceful methods of dispute resolution. However, while advocating the peaceful resolution of conflicts, nothing can prevent the use of collective force, even as a last resort to achieve moral ends (*jus ad bellum*) since the duty to protect the human rights of all members of the human family and its community authorizes the use of force—such as self-defense (article 51) (Brownlie, 1963; Damrosch, 1993; Organização das Nações Unidas, 1945).

In view of this, the use of force to pursue a moral end must be limited to it, explaining the recognition of the UN Charter of the postulate of just war or *jus ad bellum*. Its preamble specifically states that peoples are entitled to unite their forces to maintain international peace and security and ensure that armed force will only be used in the common interest by accepting principles and instituting methods (Glanville, 2014).

However, the Charter prohibits the use of force “against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” unless the UNSC adopts coercive measures “as may be necessary for the maintenance of international peace and security” (Organização das Nações Unidas, 1945) when it considers that peaceful methods are insufficient to frustrate threats or violations of peace or acts of aggression (Nadin, 2018). Thus, collective security aims to protect states from external threats and people whose human rights have been violated (Brierly, 1963).

We emphasize that the only legitimate purpose of the use of force is to protect the human rights of members of human communities. Thus, force must be necessary and proportionate to the pursued military purpose, justifying the limitations on its use, as per the norms of international humanitarian law. Thus, the requirements of necessity and proportionality are interdependent since the use of force is “proportionate” to a “necessary” given moral end, i.e., in the failure of peaceful conflict resolutions (Brownlie, 1963; Damrosch, 1993).

3.2 Normative precepts

3.2.1 International human rights law and humanitarian interventions

Considering the normative framework of human rights, humanitarian interventions are legitimate precisely because these norms are considered *jus cogens*, i.e., imperative and inviolable

for all States. The UN Charter clearly shows the importance of rights as a fundamental ethical principle (Vik, 2015).

It states that one of the fundamental objectives of the UN is “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article 1). Likewise, it states that its competence can promote “universal respect for, and observance of, human rights and fundamental freedoms for all” (Article 55) and the responsibility of States to “take joint and separate action in co-operation with the Organization” (Article 56) (Johansen, 1996; Organização das Nações Unidas, 1945; Vik, 2015).

Although non-binding, the Universal Declaration of Human Rights constitutes the foundation of the body of human rights law since it inaugurated the universe of treaties promoting these rights, such as the 1948 Genocide Convention, which authorizes the UN to take the necessary measures to prevent and suppress acts of genocide, ratifying the UNSC action on this subject (Article 8) (Fundo das Nações Unidas para a Infância, 1948).

The Declaration also classifies human rights into two categories: (i) civil and political—reflected in the 1966 International Covenant on Civil and Political Rights; and (ii) economic, social, and cultural—reflected in the 1966 International Covenant on Economic, Social and Cultural Rights. As such, civil and political rights prohibit discrimination on the grounds of race, sex, language, religion, political opinion, nationality, property, birth, or other statuses; guarantees the right to life, liberty, and security, and forbids torture or other cruel, inhuman, and degrading punishments (Brasil, 1992).

Economic, social, and cultural rights include the right to social security, work only under favorable conditions, protection against unemployment, rest and leisure, an adequate standard of living for individuals’ health and well-being (including all necessary social services), education, and participation in the cultural life of one’s community (Brasil, 1992).

Despite the unequivocal importance of human rights, no consensus exists on the extent to which they should be recognized as a custom of international law or general principles of law (Abi-Saab, 1984; Hill, 2009) and if all the rights in the Declaration bind all States. Likewise, no consensus exists on whether they should be recognized as universal or as just a Western version of them. Such discussions about the relativist view of human rights question humanitarian interventions, especially its legitimacy as an instrument to protect human rights (Doucet, 2017).

3.2.2 International humanitarian law

While humanitarian interventions have often been an instrument to respond to civilian problems due to armed conflicts involving serious human rights violations, IHL develops a normative basis that aims to legitimize military intervention with a humanitarian scope (Corn; Watkin; Williamson, 2018). In its framework, IHL codifies the rules governing hostilities on the battlefield, i.e., *jus in bello*, to protect civilians and their property. Composed of the four Geneva Conventions of 1949, in addition to the customary rules and general principles of law

on the conduct of war, IHL lists the obligations of States regarding treatment toward civilians, combatants, prisoners of war, and other individuals in international armed conflicts (Comitê Internacional da Cruz Vermelha, 1949). Likewise, Article 3, common to the four Geneva Conventions of 1949, regulates non-international armed conflicts and imposes the obligations of the parties and their treatment toward non-combatants (Vik, 2015; Nadin, 2018).

It is noteworthy that all the Geneva Conventions lay out the list of serious violations that are considered war crimes, requiring the proper allocation of criminal sanctions to their perpetrators. Therefore, it is incumbent on States to prosecute suspects of such violations (Corn; Watkin; Williamson, 2018; Damrosch, 1993).

To reinforce the normative content of these Conventions, the two adopted 1977 Additional Protocols tried to harmonize the norms applicable in a war scenario (Falk, 2015). Thus, the First Geneva Protocol sets standards for international armed conflicts—for example, it prohibits indiscriminate attacks that may cause accidental losses or injuries to civilians, damage to their property, or a combination of both, which would be excessive in relation to concrete military actions (article 51) (Comitê Internacional da Cruz Vermelha, 1949).

The First Protocol reflects the customary rules and principles of *jus ad bellum* and *jus in bello*, which require that the necessary and proportionate use of force to the military objective. The Second Geneva Protocol, on the other hand, is intended for non-international armed conflicts. This legal document expands the safeguards woven into Article 3 common to the four Geneva Conventions (Brownlie, 1963; Comitê Internacional da Cruz Vermelha, 1949; Vik, 2015).

However, it is important to note the gaps in the categories of persons bound or protected by the Geneva Conventions and Protocols. For example, UN peacekeepers lie outside the list of persons safeguarded by IHL (Corn; Watkin; Williamson, 2018). Therefore, to remedy this gap, in 1994, the UN General Assembly adopted the Convention on the Safety of United Nations and Associated Personnel to protect actions undertaken for humanitarian purposes. Thus, all personnel involved in UN peacekeeping operations, which embody humanitarian interventions, fall under IHL norms (Bloom, 1995; Cunliffe, 2017).

3.2.3 *International criminal law*

International criminal law flourishes in customary law, especially regarding piracy crimes and in the work of the Nuremberg and Tokyo Tribunals, which tried and convicted those accused of crimes during World War II. The body of international criminal law is currently more developed, mainly due to numerous treaties, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the four Geneva Conventions, which prohibit certain types of human rights violations (Comitê Internacional da Cruz Vermelha, 1949).

After the Second World War and in the face of numerous separatist movements, the UN Security Council determined the creation of *ad hoc* criminal tribunals for Yugoslavia and Rwanda to try those accused of war crimes, crimes against humanity, and genocide. After these tribunals,

the international community made a greater effort to establish a permanent international criminal court, which was actualized at the Diplomatic Conference in Rome in July 1998 (Wedgewood, 1999; Falk, 2015).

The Rome Statute of the International Criminal Court, adopted in 1998, configures a watershed in the evolution of international criminal law and IHL. It lists the international crimes within the jurisdiction of that court: genocide, crimes against humanity, war crimes, and the crime of aggression (Best, 1994; Nadin, 2018). Thus, the importance of typifying international crimes, which, in their essence, express the violation of human rights norms, finds the possibility of a new approach to humanitarian intervention and international law based on such normative foundations (Johansen, 1996; Vik, 2015). Even if it is controversial to advocate humanitarian interventions authorized by the UN to aim and arrest people suspected of committing genocide, war crimes, crimes against humanity, nothing prevents its use to end such violations to the normative and moral precepts of international law and future violations (Best, 1994; Nadin, 2018).

4 CONCLUSION

This study sought to describe some of the interventions coordinated under the aegis of the UN to serve as guidance regarding the vicissitudes of the theme, i.e., the selectivity of the international community regarding responses to humanitarian crises. Thus, the absence of objective intervention bases shows its politicization, especially regarding the decision-making process to authorize this practice. Likewise, the conflict between human rights norms and respect for sovereignty highlights the dilemma of humanitarian interventions based on a political charge since, on the one hand, States must guarantee human rights and, on the other hand, their interests affect interventionist actions, showing the selectivity of State policies.

This has given rise to much debate about whether the United Nations has a duty to promote humanitarian interventions. Similarly, the UN Security Council and member states lie under question about their moral obligations in the face of human rights violations around the globe. Thus, the impasse as to whether to intervene in the domestic affairs of States when they concern human rights violations raises ethical and normative postulates in defense of the adoption of humanitarian interventions—understood as the use of force by humanitarian military interventions.

The ethical precepts fostered throughout this study show the obligation to undertake humanitarian actions in extreme violations against human rights norms. Likewise, legal grounds can be acclaimed to legitimize humanitarian interventions, although nothing can prevent the discretion of the UNSC and intervening States from dictating the most appropriate measures within their capacities to carry out interventions. This stems from legal precepts legitimizing humanitarian interventions corresponding to ethical precepts. This recognizes humanitarian interventions as morally essential, which have been specified as to make it reasonable to impose them on States—and other international actors—as legal norms.

It is also morally essential that some legal means be available in the international environment for the use of military force to prevent or end widespread and severe attacks on human rights. Thus, this legal means may include intervention actions by States and regional organizations in light of the authorization of the UN Security Council.

In summary, the adequacy of the legal duties that result from ethical precepts translated into general principles of law highlights the legal perspective of humanitarian interventions and their possibility according to international law principles. Thus, humanitarian interventions become an imperative norm due to the moral need to guarantee the effectiveness of human rights, especially for victims.

The ethical and legal precepts themselves indicate the provisions of treaties that are shielded in human rights norms due to their moral consequences and their impact on the protection of other rights. Thus, treaties should be seen as giving precedence to dignified humane treatment and limiting the use of force to saving individuals' lives and protecting human rights.

REFERENCES

ABI-SAAB, G. The Specificities of Humanitarian Law. *In*: SWINARSKI, C. (ed.). **Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet**. Leiden: Brill, 1984.

ALTMAN, A.; WELLMAN, C. H. From Humanitarian Intervention to Assassination: Human Rights and Political Violence. **Ethics**, Chicago, v. 118, n 2, p. 22857, 2008. Disponível em: <https://www.jstor.org/stable/10.1086/526543>. Acesso em: 3 nov. 2023.

AYOOB, M. Humanitarian Intervention and International Society. **Global Governance**, Leiden, v. 7, n. 3, p. 225-230, 2001. Disponível em: <https://www.jstor.org/stable/27800300>. Acesso em: 3 nov. 2023.

BEST, G. **War and Law Since 1945**. Oxford: Clarendon Press, 1994.

BETTS, R. K. The Delusion of Impartial Intervention. **Foreign Affairs**, Nova York, v. 73, n. 6, p. 20-33, 1994. Disponível em: <https://www.jstor.org/stable/20046926>. Acesso em: 3 nov. 2023.

BLOOM, E. T. Protecting Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel. **The American Journal of International Law**, Cambridge, n. 89, p. 621-631, 1995. Disponível em: <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/protecting-peacekeepers-the-convention-on-the-safety-of-united-nations-and-associated-personnel/591CE7CE066EB4CE015BB8175F4897E2>. Acesso em: 3 nov. 2023.

BOWETT, D. W. **United Nations Forces: A Legal Study**. New York: Frederick A. Praeger, 1964.

BRASIL. **Decreto nº 592, de 6 de julho de 1992**. Atos internacionais. Pacto internacional sobre direitos civis e políticos. Promulgação. Brasília, DF: Presidência da República, Disponível em: http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0592.htm. Acesso em: 20 abr. 2022.

BRIERLY, J. L. **The Law of Nations: An Introduction to the International Law of Peace**. New York: Oxford University Press, 1963.

BROWN, C. **International Relations Theory: New Normative Approaches**. New York: Columbia University Press, 1992.

BROWNLIE, I. **International Law and the Use of Force by States**. Oxford: Clarendon Press, 1963.

CHARNEY, J. I. Anticipatory Humanitarian Intervention in Kosovo. **The American Journal of International Law**, Cambridge, v. 93, n. 4, p. 834-841, 1999. Disponível em: <https://www.jstor.org/stable/2555348>. Acesso em: 3 nov. 2023.

COMITÊ INTERNACIONAL DA CRUZ VERMELHA. **As Convenções de Genebra de 1949 e seus Protocolos Adicionais (1949)**. Genebra: CICV, 2002. Disponível em: <https://www.icrc.org/pt/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>. Acesso em: 20 abr. 2022.

CORN, G.; WATKIN, K.; WILLIAMSON, J. *The Law in War: A Concise Overview*. Abingdon: Routledge, 2018.

CUNLIFFE, P. *Legions of Peace: UN Peacekeepers from the Global South*. In: CONING, Cedric Hurst; AOI, Chiyuki; KARLSRUD, J. (ed.). **UN Peacekeeping Doctrine in a New Era: Adapting to Stabilisation, Protection and New Threats**. Abingdon: Routledge, 2017.

DAMROSCH, L. F. *The Civilian Impact of Economic Sanctions*. In: DAMROSCH, Lori Fisler (ed.). **Enforcing Restraint: Collective Intervention in Internal Conflicts**. New York: Council on Foreign Relations Press, 1993, p. 274–315.

DANISH INSTITUTE OF INTERNATIONAL AFFAIRS. **Humanitarian Intervention: Legal and Political Aspects**. Copenhagen: Danish Institute of International Affairs. København: DIIS, 1999. Disponível em: https://www.diis.dk/files/media/publications/import/extra/humanitarian_intervention_1999.pdf. Acesso em: 3 nov. 2023.

DIEHL, P. F. **International Peacekeeping**. Baltimore: Johns Hopkins University Press, 1994.

DOUCET, M. G. **Reforming 21st Century Peacekeeping Operations: Governmentalities of Security, Protection, and Police. (Interventions)**. Abingdon: Routledge, 2017.

FALK, R. **Humanitarian Intervention and Legitimacy Wars: Seeking Peace and Justice in the 21st Century**. Abingdon: Routledge, 2015.

FUNDO DAS NAÇÕES UNIDAS PARA A INFÂNCIA. **Declaração Universal dos Direitos Humanos**. Nova York: Unicef, 1948. Disponível em: <https://www.unicef.org/brazil/declaracao-universal-dos-direitos-humanos>. Acesso em: 20 abr. 2022.

GLANVILLE, L. *Is Just Intervention Morally Obligatory? The Future of Just War*. **New Critical Essays**, Athens, p. 48-61, 2014. Disponível em: <https://www.jstor.org/stable/j.ctt46nbn3>. Acesso em: 3 nov. 2023.

GOODMAN, R. Humanitarian Intervention and Pretexts for War. **The American Journal of International Law**, Cambridge, v. 100, n. 1, p. 107-41, 2006. Disponível em: <https://www.jstor.org/stable/3518833>. Acesso em: 3 nov. 2023.

GROMES, T. A Humanitarian Milestone? Nato's 1999 Intervention in Kosovo and Trends In Military Responses To Mass Violence. **Peace Research Institute Frankfurt**, Frankfurt, p. 1-3, 2019. Disponível em: <https://www.jstor.org/stable/resrep19997.1>. Acesso em: 3 nov. 2023.

HENKIN, L.; PUGH, R. C.; SCHACHTER, O.; SMIT, H. **International Law: Cases and Materials**. Eagan: West Publishing, 1993.

HENKIN, L. Kosovo and the Law of Humanitarian Intervention. **The American Journal of International Law**, Cambridge, v. 93, n. 4, p. 824-28, 1999. Disponível em: <https://www.jstor.org/stable/2555346>. Acesso em: 3 nov. 2023.

HERACLIDES, A.; DIALLA, A. The Origins of the Idea of Humanitarian Intervention: Just War and against Tyranny. Humanitarian Intervention in the Long Nineteenth Century: Setting the Precedent. **Manchester University Press**, p. 14-30, 2015. Disponível em: <https://www.jstor.org/stable/pdf/j.ctt1mf71b8.6.pdf?acceptTC=true&coverpage=false>. Acesso em: 3 nov. 2023.

HEYSE, L.; ZWITTER, A.; WITTEK, R.; HERMAN, J. **Humanitarian Crises, Intervention and Security: A Framework for Evidence Based Programming**. Abingdon: Routledge, 2015.

HILL, T. Kant and humanitarian intervention. **Philosophical Perspectives**, [s. l.], v. 23, p. 21-40, 2009. Disponível em: <https://www.jstor.org/stable/40658401>. Acesso em: 3 nov. 2023.

HUNT, C. T. **UN Peace Operations and International Policing: Negotiating Complexity, Assessing Impact and Learning to Learn**. Abingdon: Routledge, 2015.

JOHANSEN, R. C. Limits and Opportunities in Humanitarian Intervention. In: HOFFMANN, Stanley. **The Ethics and Politics of Humanitarian Intervention**. Notre Dame: University of Notre Dame Press, 1996. p. 61-86.

JOKIC, A. **Humanitarian Intervention: Moral and Philosophical Issues**. Peterborough: Broadview Press, 2003.

KLOSE, F. **The Emergence of Humanitarian Intervention: Ideas and Practice from the Nineteenth Century to the Present**. Cambridge: Cambridge University Press, 2016.

KUPERMAN, A. J. **The Limits of Humanitarian Intervention: Genocide in Rwanda.** Washington, DC: Brookings Institution Press, 2001.

LEBL, L. S. **Islamism and security in Bosnia-herzegovina.** Washington, DC: Department of the Army, 2014.

MALITO, D. V. Neutral in Favour of whom? The UN Intervention in Somalia and the Somaliland Peace Process. **International Peacekeeping**, London, v. 24, n. 2, p. 280-303, 2017.

MENON, R. **The Conceit of Humanitarian Intervention.** New York: Oxford University Press, 2016.

NADIN, P. **The Use of Force in UN Peacekeeping.** Abingdon: Routledge, 2018.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Departamento de Informação Pública. **Carta das Nações Unidas e Estatuto da Tribunal Internacional de Justiça.** Nova York: Organização das Nações Unidas, 1945. Disponível em: <https://unric.org/pt/wp-content/uploads/sites/9/2009/10/Carta-das-Na%C3%A7%C3%B5es-Unidas.pdf>. Acesso em: 20 abr. 2022.

VIK, C. **Moral Responsibility, Statecraft and Humanitarian Intervention: The US Response to Rwanda, Darfur, and Libya.** Abingdon: Routledge, 2015.

WEDGWOOD, R. NATO's Campaign in Yugoslavia. **The American Journal of International Law**, Cambridge, v. 93, n. 828, 1999, p. 828–34.