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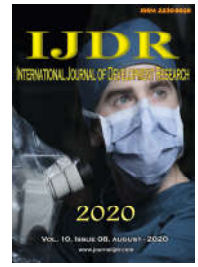
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## THE RESPONSIBILITY TO PROTECT AND PEACEKEEPING MISSIONS: A VIEW FROM HUMAN RIGHTS PERSPECTIVE

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### ABSTRACT

The paper presented aims to show the effectiveness and necessity to have the responsibility to protect as a tool when facing armed conflicts and its role to protect Human Rights. Firstly, the link concerning human rights and armed conflict, and for that purpose, it shows the interrelation between humanitarian law and human rights law. After, it follows to responsibility to protect as an instrument for humanitarian intervention in order to proceed for a peace and security environment. Finally, the Democratic Republic of Congo is a study case regarding the responsibility to protect and an important asset to analyze the motives that leads to U.N Security Council Resolution for humanitarian intervention, as decision making can be challenging and many times made by political purposes.

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### INTRODUCTION

For many years, the *Jus Bellum* has updated and further enlightened the international human rights on the theoretical framework and practical consequences of humanitarian intervention and its link to sustainable peace. Within the context of this discourse, the debate surrounds the international responsibility to protect human rights when the State fails to do so. One of the main principles of Public International Law is the principle of non-intervention, which is, no State can intervene on other States' territory or political choices, but international human rights development brought a new challenge to the political order, calling the action of the international community to secure peace and security. In order to do so, humanitarian intervention came as a way to find a mitigation to the above-mentioned principle and the protection of human rights. The decision-making is often difficult to make and causes political instability, but the necessity to intervene must come with a solid justification and must be based on legal grounds in order to avoid being a political decision not a humanitarian decision. In order to demonstrate the applicability the responsibility to protect and its purposes

and achievements, we use the Democratic Republic of Congo to demonstrate the use peacemaking operations as a tool to the protection of human rights.

**The Interrelation between Human Rights and International Humanitarian Law:** First, it important to highlight that international law protects fundamental rights during wartime. However, a potential difficulty in securing such protection is determining how the two areas of international law - the law of armed conflicts – international humanitarian law and human rights law interrelate.

The doctrine of Humanitarian intervention, as expounded by some early international legal scholars, (...), recognized as lawful the use of force by one or more states to stop the maltreatment by a state of its own nationals when that conduct was so brutal and large-scale as to shock the conscience of the community of nations. (...). Nevertheless, the doctrine of humanitarian intervention was the first to give expression to the proposition that there were some limits to the freedom states enjoyed

under international law in the treatment of their own nationals.<sup>1</sup>

The international humanitarian law is certainly a specialized body of law, which regulates the methods of conducting hostilities and the treatment of victims of warfare. The regime applies only in situations of armed conflict and military occupation. In addition, it is important to establish if it is an international armed conflict or if it is internal armed conflict. The first is classified as a conflict related to two or more States and the second to non-state actors internally. After the Second World War, it was elaborated the main instruments: the four Geneva Conventions of 1949. The Conventions provide rules for the wounded, sick and shipwreck, prisoners of wounded civilians. Among its norms, it is important to highlight the common article 3 that imposes direct legal obligations on all parties to a conflict, including non-state actors. These obligations include the most basic rights of individuals such as freedom from torture, murder, mutilation and cruel treatment. In the midst of the Cold War, States decided to negotiate two additional protocols to the 1949, finalized in the 1977. Each Protocol contains rules pertaining to the two domains in a relatively undifferentiated organizational structure. The 1949 Conventions became the first treaties in modern history to achieve ratification by every state in the world.<sup>2</sup>

After the summary of the humanitarian law, we pose the question: what is the relationship between international human rights and the humanitarian law? This link is important to highlight so we can demonstrate the importance of the responsibility to protect.

Regarding humanitarian law, Professor Philip Alston defines its principles:

The law of armed conflicts is governed by overarching principles and a set of specific rules. The former includes three general principles. First is the principle of necessity: an obligation to use only the amount of force needed to obtain a military objective. Second is the principle of distinction: an obligation to attack only legitimate military targets and never deliberately attack civilians or civilian objects. Third is the principle of proportionality: an obligation to ensure an acceptable relationship between the legitimate destructive effect and undesirable collateral effects of military attack. The principle of proportionality may, alternatively, be formulated as an obligation to ensure any incidental loss or injury to civilian life is not excessive in relation to the military objective of an attack.<sup>3</sup>

Each basic principle should be found within the specific rules and norms of International Humanitarian Law (IHL) itself, but the principles may also help the interpretation of the law when the legal issues are unclear or controversial, always motivated by the understanding that rules of IHL attempt, in broad terms, aim to regulate conflict in order to minimize human suffering during and after the conflict. Even analyzing the main principles of IHL, the relationship between human rights and

humanitarian law it is not so evident. It became clearer when reading the International Covenant on Civil and Political Rights (ICCPR), the European Convention of Human Rights and American Conventions on Human Rights. All these legal instruments have the derogation clauses. These provisions permit the States, in time of war or serious national emergencies, to suspend some rights protect by them:

First, all derogation clauses list certain specific fundamental rights which may not be suspended even in time of war or other emergency. (...) Among these are the right to life, the right not to be tortured or to be held in slavery, and the right not to be subject to *ex post facto* laws or punishments. Second, the derogation clauses also limit the manner in which states may exercise their power to suspend the rights that are derogable.<sup>4</sup>

In this regard, it ought to be understood that even when facing an armed conflict, and considering humanitarian law *lexspeciali* to regulate the state of war, human rights must to be respected, creating an important standard while dealing with the armed conflict. On this subject, we highlight a common principle to many legal systems, public international law included, is *lexspecialis derogate legigenerali*. That is, a specific of special rule should take precedence over a general rule. In contrast with the law of armed conflict, international human rights law applies during peacetime and wartime, even when we consider it *lexspeciali*, as demonstrated above. In 1968, the Conference on Human Rights at Teheran spurred a series of annual General Assembly Resolutions entitled "Respect for Human Rights in Armed Conflicts" and those resolutions were a prelude to the 1977 Geneva Protocols, demonstrating that human rights and humanitarian law work side by side. The International Court of Justice (ICJ) has addressed the issue of human rights derogation during times of war more than once. In the Advisory Opinion "Legality of the threat or use of nuclear weapons advisory opinion of 8 July - 1996", the ICJ stated that:

25. The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lexspecialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.<sup>5</sup>

In a second opportunity, the ICJ issued recent opinions on that, involving the application of human rights in armed conflict

<sup>1</sup> BUERGENTHAL, Thomas, SHELTON, Dinah, STEWART, David P. *International Human Rights in a nut shell*, 4<sup>th</sup> edition, p.3.

<sup>2</sup> ALSTON, Philip.GOODMAN, Ryan. *International Human Rights*. Oxford. 2017, p. 406

<sup>3</sup> ALSTON, Philip.GOODMAN, Ryan. *International Human Rights*. Oxford. 2017, p. 404.

<sup>4</sup> BUERGENTHAL, Thomas, SHELTON, Dinah, STEWART, David P. *International Human Rights in a nut shell*, 4<sup>th</sup> edition, 392.

<sup>5</sup> ICJ, *Legality of the threat or use of nuclear weapons advisory opinion of 8 July 1996*. Disponível em: <<https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>>. Acesso em: 29 de junho de 2020.

and military occupation. The first concerned Israel's construction of a physical barrier on occupied Palestinian territory. The second, in 2006, involving Democratic Republic of Congo and Uganda.<sup>6</sup>

The ICJ decided that:

The protection offered by human rights conventions does not cease in case of armed conflicts, save through the effect of provisions for derogation of kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, these are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.<sup>7</sup>

In this regard, while putting together humanitarian law and human rights law that it shows the reason why the United Nations developed the concept of Responsibility to Protect. The UN Security Council has repeatedly condemned the "deliberate targeting of civilians and other protected persons" during armed conflicts, as demonstrated in Resolution 1738 (2006):

Recognizing the importance of a comprehensive, coherent and action-oriented approach, including in early planning, of protection of civilians in situations of armed conflict. Stressing, in this regard, the need to adopt a broad strategy of conflict prevention, which addresses the root causes of armed conflict in a comprehensive manner in order to enhance the protection of civilians on a long-term basis, including by promoting sustainable development, poverty eradication, national reconciliation, good governance, democracy, the rule of law and respect for and protection of human rights. Deeply concerned at the frequency of acts of violence in many parts of the world against journalists, media professionals and associated personnel in armed conflict, in particular deliberate attacks in violation of international humanitarian law (...).<sup>8</sup>

It is clear that in order to protect human rights while acting during armed conflicts recalls that international community should address the issue soon enough to protect lives, and for this reason the responsibility to protect emerged as an important aspect in both humanitarian law and human rights law.

**The Responsibility to Protect in Armed Conflicts:** Due to the serious human rights violations experienced mainly at the end of the 20th century, which challenged the new concept of peace, the then Secretary-General of the United Nations, Kofi Annan, in 2001, raised the issue of International Security and Peace, request that a new consensus be forged on responses to massive human rights violations.

The General Assembly held in 2005, in response, adopted the Responsibility to Protect, as seen in paragraphs 72 and 74 of the document that closes the First World Conference, held in commemoration of the 60th anniversary of the UN, which states:

We accept that the responsibility to protect civilian populations belongs primarily to each state. The international community should, when necessary, encourage and assist States to exercise this responsibility. The international community also has a responsibility to use diplomatic, humanitarian and peaceful means based on Chapters VI and VII of the UN Charter to help protect civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity. If such peaceful means are insufficient, we recognize our shared responsibility to carry out collective action through the Security Council and, where appropriate, in cooperation with the relevant regional organizations under Chapter VII of the Charter.<sup>9</sup>

The Responsibility to Protect came then as an alternative way to the new threats to International Security and an instrument for the establishment of peace, pointing out that this is primarily the State's responsibility, however, this responsibility is transferred to the international community when, in the face of conflict and violations human rights, this state cannot guarantee the security of its civilians, that is, it is the persecutor of the population itself. One of the most relevant conceptual conflicts in the international scenario happens between the concept of sovereignty and human rights. The first dimension of this conflict reflects on the matter of legitimacy, once the human rights protection requires the mitigation of States' sovereignty, which also has evolved to responsibility to its citizens and State and citizen. On the other hand, it involves a matter of legality, because sovereignty is more related to the core of International Law than human rights, which may lead to inaction when facing human rights violation.<sup>10</sup> This conflict is clearer when we face the practice of humanitarian interventions, because we have on one hand the limitation on the use of force and the necessity to protect human rights. Due to this characteristic, humanitarian interventions have been debated and put in practice for many years, without a consensus related to legality and legitimacy.

During the years, the humanitarian intervention concept developed and it can be defined as "coercive action against a State to protect people within its border from suffering grave harm."<sup>11</sup> The history show that many times it is the State that violates human rights, acting or omitting, demonstrating that human rights should be considered beyond sovereignty opening for humanitarian interventions. That is extremely important when stabilizing the importance of the responsibility to protect in the international scenario once the responsibility to protect is a limitation for the use of force for humanitarian reasons, putting a limit to its use for other purposes that could be not related to human rights protection. In the report "In the larger Freedom towards development, security and human

<sup>6</sup> ABRESCH, W. A Human Rights Law of International Armed Conflict: The European Court of Human Rights in Chechnya, 2005.

<sup>7</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ, 2004, para 106.

<sup>8</sup> UN. Resolution 1738 Protection of civilians in armed conflict. Disponível em: <<http://unsr.com/en/resolutions/1738>>. 29 de junho de 2020.

<sup>9</sup> U.N. Responsibility to Protect. Disponível em: <<http://responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/398-general-assembly-r2p-excerpt-from-outcome-document>>. Acesso em 02 de junho de 2020.

<sup>10</sup> JUBILUT, Lilianna Lyra. Não Intervenção e Legitimidade Internacional. Ed. Saraiva, 2010, p. 153.

<sup>11</sup> EVANS, G.; SAHNOUN, M. The Responsibility to Protect. Foreign affairs, v. 81, p. 99.

rights for all” it’s not mention the elements and criteria of the *responsibility to protect*, but causes that trigger the responsibility to protect there is a direct mention to crimes against humanity. According to Boutros Boutros-Ghali, the problems that we face in the world, such as hunger, drug trafficking, ecological problems, armed conflicts and refugees, are questions that trespass the boundaries of a State and for that reason, requires the constant involvement of the international community. In this context, the peacekeeping operations are a tool for the humanitarian intervention. The principles of consent between the parties involved, impartiality and the prohibition of the use of force, as affirmed by the Capstone Doctrine, must be part of humanitarian interventions:

The 2008 doctrine re-confirms and provides a contemporary understanding of how practitioners might apply the UN’s three basic peacekeeping principles, namely: consent, impartiality and non-use of force, except in self-defense and defense of the mandate. ‘Consent’ by the parties to the peace- or cease-fire agreement, is a dynamic and multilayered concept; it is essential for mission success and must be constantly managed, but it is understood that it may often be lacking at the tactical level. ‘Impartiality’ means that the mandate must be applied without favor or prejudice to the parties to the peace agreement, and should not be confused with ‘neutrality’. ‘Non-use of force’ is re-interpreted to refer to the strategic level, i.e. Non-use of peace enforcement. The doctrine argues that the UN is best suited to undertake consent based operations, but introduce the concept ‘robust peacekeeping’ to signify recognition that the use of force at the tactical level may be necessary to defend the mission and its mandate from spoilers, and to protect civilians (when mandated).<sup>12</sup>

### **Politicization of Human Rights: Decision Making in Humanitarian Intervention**

The first question is: How can humanitarian intervention be justified? There is so much more than the justification of human rights protection in order to justify an intervention. In the case of any threat to peace is brought to the attention of the Security Council, it may decide to deploy a peacekeeping operation in response to the crisis through a resolution. Following the Secretariat’s considerations and suggestions, the Security Council will approve a resolution that will give rise to the creation of a peacekeeping mission and outline its respective mandate. Among the forecasts contained in the mandate, the characteristics of the mission, the role to be played by it, the tasks and functions to be carried out must be clearly and in detail; the duration of this undertaking; the division of responsibility between the United Nations and local entities.

(...) if humanitarian intervention is ever justifiable or permissible it is because of overwhelming humanitarian need, defined in terms of human rights violations (Donnelly 2003). In the language of international law, human rights serve as a modern component of *ius ad bellum* or just cause. The post Second World War adoption of human rights as the language of an

international moral code has had practical implications for international relations, one extreme example of which has been the use of human rights principles as justifications for humanitarian interventions. To the extent that an international moral code exists, human rights are the language in which it is expressed, and humanitarian intervention is one of several forms that enforcement takes.<sup>13</sup>

If peace is one the main goals of the U.N, assuring it requires action, but when deciding any positive case for intervention based on terms of human rights, it must always be weighed against principle of non-intervention, contained in the U.N Charter. It is impossible to ignore that humanitarian intervention takes into account a multitude of harms that inevitably accompany military engagement of any sort, including interference in the domestic affairs of a state. The main problem when authorizing a humanitarian intervention is that this choice might be made selectively or inconsistently, raising a concern from a variety of angles. The possible selectivity in humanitarian intervention starts from the observation that the pattern of reasons cited for intervention and the occasions of humanitarian intervention do not match, for example. This scenario shows a random and arbitrary decision of humanitarian intervention under the flag of the responsibility to protect.

Given that humanitarian intervention is explicitly a response to humanitarian need, the questions of inconsistency and selectivity arise because not all humanitarian need meets with any response, let alone intervention, and furthermore because among the cases where humanitarian intervention has been deemed permissible, the levels of humanitarian need and human rights violation have varied along a variety of non-moral dimensions such as relative strategic importance or levels of development.<sup>14</sup>

The process for deliberation about humanitarian intervention requires consideration of complex justifications towards the prevention or a response to stop massive human rights violation. At this point, is important to highlight that even with the Genocide Convention of 1948 also overrode the nonintervention principle to lay down the commitment of the international community to prevent and punish. Yet, inaction in response to the Rwanda genocide in 1994 and failure to halt the 1995 Srebrenica massacre in Bosnia highlight the complexities of international responses to stop crimes against humanity.<sup>15</sup> The absence of general rules transform the decision making even more difficult, especially when the main organ to make this decision is highly politicize and its members have the veto power, which impedes urgent actions or make it for political reason, not humanitarian reasons. In the context of Libya, the international community unfortunately did take sides and the Security Council could not to authorize

<sup>13</sup> SZENDE Jennifer. Selective humanitarian intervention: moral reason and collective agents. Disponível em: <<https://doi.org/10.1080/17449626.2011.635679>>. Acesso em 24 de junho de 2020.

<sup>14</sup> SZENDE Jennifer. Selective humanitarian intervention: moral reason and collective agents. Disponível em: <<https://doi.org/10.1080/17449626.2011.635679>>. Acesso em 24 de junho de 2020.

<sup>15</sup> BAJORIA Jayshree and MCMAHON, Robert . The Dilemma of Humanitarian Intervention. Disponível em: <<https://www.cfr.org/background/dilemma-humanitarian-intervention>>. Acesso em 24 de junho de 2020.

<sup>12</sup> ONU, “Capstone Doctrine, 2008., p. 6.. Disponível em: [https://www.unocha.org/sites/dms/Documents/DPKO%20Capstone%20doctrine%20\(2008\).pdf](https://www.unocha.org/sites/dms/Documents/DPKO%20Capstone%20doctrine%20(2008).pdf)>acesso em 22 de junho de 2020

anything similar. "Libya has exposed fissures within the international community and brought to the fore conflict not only in the Security Council permanent members but also among many developing countries (...) about the concept" of R2P".<sup>16</sup> Over the last few years, it has been clear that Russia and China have historically been reluctant to support any form of intervention. What are the political elements to decide for humanitarian intervention? We could say that the willingness to use armed force is inevitably influenced by not only by massive human rights violation, but also by geopolitical factors, including the relevance of the country to the world community, regional stability, and the attitudes of other major players:

(...) Social, political, geographic, economic, and military considerations make for a daunting set of potentially relevant factors. That is, deliberations on the permissibility of humanitarian intervention in any given case are necessarily complex. Rules of action in this context can therefore only be heuristics. Strict action-guiding principles are unable to be sufficiently fine grained to deal with the complexity of international relations, or of the question of a just war. If consistency requires that generalizable rules of intervention be applied in the same way in every case, then consistency would undermine the requirement that intervention be publicly justified because it would require that decisions regarding humanitarian intervention be made independently of the context in which they arise, and would overlook the nature of the agents making the decisions.<sup>17</sup>

Analyzing the humanitarian interventions requires the analysis of its justification for either their performance or their omission. This justification must be context-specific. Accordingly, the decision making process of justification makes the action righteous in Scanlon's sense when human rights abuse is publicly recognized, states and international confederations are called on to act, and must decide whether to intervene to protect human rights.<sup>18</sup> The United Nations selective response to humanitarian crises was evidenced by the uneven reaction to the conflicts in Libya and Syria, which demonstrates the politicization of human rights, showing that human rights' protection and political reasons goes alongside when facing the challenge to act and put in place humanitarian interventions. Some criticize this practice, arguing that the selectiveness of humanitarian interventions undermines their legitimacy and ultimately their success that makes clear that the uneven response to humanitarian emergencies may suggest that these interventions are not motivated by humanitarian concerns but by the military and economic interests of powerful states. This view undermines the enforcement of human rights norms and the rule of law in international politics.<sup>19</sup>

<sup>16</sup> BAJORIA Jayshree and MCMAHON, Robert . The Dilemma of Humanitarian Intervention. Disponível em: <<https://www.cfr.org/backgrounder/dilemma-humanitarian-intervention>>. Acesso em 24 de junho de 2020.

<sup>17</sup> SZENDE Jennifer. Selective humanitarian intervention: moral reason and collective agents. Disponível em: <<https://doi.org/10.1080/17449626.2011.635679>>. Acesso em 24 de junho de 2020.

<sup>18</sup> BAJORIA Jayshree and MCMAHON, Robert . The Dilemma of Humanitarian Intervention. Disponível em: <<https://www.cfr.org/backgrounder/dilemma-humanitarian-intervention>>. Acesso em 24 de junho de 2020.

<sup>19</sup> BINDER, Martin. Why Does UN Humanitarian Intervention Remain Selective?. Disponível em: <<https://www.oxfordresearchgroup.org.uk/blog/why-does-un-humanitarian-intervention-remain-selective>>. Acesso em 25 de junho de 2020.

The United Nations plays the main role when deciding or not for humanitarian intervention. Some scholars argue that U.N approval is needed to validate the facts being cited to justify war, or to analyze and verify if the international standards are being applied. On their view, U.N authorization is needed because it effects the prospect success at an acceptable cost, but because it determines whether the conditions of proportionality have been met. In that sense, the lack of UN authorization can delegitimize an intervention. Firstly, because the UN authorization is important only because it has some bearing on whether or not these conditions are met (or the certainty with which we can judge that they have been met). Secondly, the UN authorization has any ethical significance independently; its approval is a condition of just intervention, legally speaking.

The question of the permissibility of humanitarian intervention arises in contexts where human rights violations are understood to be in progress or immanent. In this sense, human rights violations call forth public inquiry into the appropriate response, and in particular into the permissibility of intervention. Human rights violations, when publicly recognized, call forth a response, even if in some cases that response is a justification for no action to be taken. In order for an action to be adequately justified, it must be guided by reasons grounded in an evaluation of the situation. When reasons are invoked, attention must be paid to the particular circumstances that make the invocation plausible.<sup>20</sup>

Humanitarian intervention is always attached to a humanitarian crises often triggered by armed conflict, international or not international, which requires a case-by-case explanation. While this sentence is true, it also true that is not that the world face a threat to peace that the U.N Security Council decides to act, imposing sanctions or putting in place peacekeeping operations in response. Martin Binder describes what he calls "*a combination of four factors* explains whether the United Nations does or does not take strong action", listed below:

- The first explanatory factor is the extent of *human suffering* in a crisis. In a humanitarian crisis people suffer and die while human rights norms are massively violated. This generates a morally motivated pressure to come to the rescue of threatened populations and to defend international norms.
- Secondly, whether the UN intervenes depends on the extent to which a crisis *spills over to neighbouring countries and regions*. Humanitarian crises often affect neighbouring countries or regions in negative ways. Spill over effects include regional conflict diffusion, refugee flows, terrorism or economic downturn. Spill over effects create a material interest to intervene.
- The third explanatory factor for UN intervention is the *ability of a target state to resist outside intervention*. Militarily strong target states, or target

<sup>20</sup> SZENDE Jennifer. Selective humanitarian intervention: moral reason and collective agents. Disponível em: <<https://doi.org/10.1080/17449626.2011.635679>>. Acesso em 24 de junho de 2020.

states that have powerful allies, can raise the costs and risks of UN intervention and affect its chances of success.

- Fourth and finally, UN intervention is explained by the level of *material and reputational resources* the UN has committed to the resolution of a crisis in the past (sunk costs). To the extent that the UN have invested time, money, and diplomatic prestige in the resolution of the crisis, this creates the wish to protect these investments through continued or escalated involvement.<sup>21</sup>

This list is very important to understand the decision making to humanitarian intervention, but is not sufficient, as the author mention, because this kind of decision is ought to be complex and need to take into account the political and historical moment, as the law itself is not enough to intervene in one country, but the explanation for the UN's uneven response to humanitarian crises can be seen by those fourth factors.

The debate whether the UN Security Council approval for humanitarian intervention is necessary is clear:

Moreover, lack of approval from the UN in its current form does not always cast doubt on the moral status of an intervention in the way that I described in Section I. I suggested that if a state is unable to convince the Security Council that an intervention is proportional, likely to succeed, and so on, it cannot judge that these conditions have been satisfied with the level of certainty and confidence that morality requires. But the veto system currently in place weakens this argument, or at least reduces the scope of its application.<sup>22</sup>

The political support is directly involved with the political will of states, especially northern countries, to put into practice the principles set out in the UN Charter. After all, when it comes to the United Nations and the international community, we are talking about something formed by governments, endowed with their own capacity and political will to act. the pressure to act or not also relates to what ends up being the knowledge of the populations of the countries, that is, the media ends up having a very important role in the decision making. The popular pressure leading to the idea that something needs to be done to account for the humanitarian catastrophe ends up generating quick and often improvised government actions.<sup>23</sup> At this point, it is important to remember that peacemaking operations are generally conducted by civilians and peacekeeping operations are conducted by military personnel, as we will see later in the analysis of the Congo case. This clear separation between two missions that have the same objective, namely, to ensure peace and stability in a country or region, means that the conflict is addressed from its different perspectives. Still, peacekeeping operations with the use of military force are, to a certain extent, contradictory, as they cannot use force, except in self-defense, and they cannot be the

bridge of dialogue, which is up to the members of the peacemaking. Regarding this observation, about the tools of humanitarian intervention, and which one is mostly used by the UN when deciding to act, the decision making is constituted by several factors, not only one.

Whether the UN intervenes or does not intervene in a humanitarian crisis cannot be explained by a single factor. Rather, a combination of conditions – the extent of human suffering, the level of spill over effects, the military strength of a target state and the extent to which the UN has been involved in a crisis before – accounts for this variation in UN action to a large extent. While the explanation I suggest here does not account for all UN responses to humanitarian crises, it covers more than 80% of the UN humanitarian interventions after the Cold War.<sup>24</sup>

What remains clear is that the resolutions of the Security Council must take into account the critical reality of the country in which humanitarian intervention is contemplated; in particular, the framework of human rights violations and the state's inability to resolve the conflict, remembering that in many cases the State itself is the perpetrator of the violation of human rights. In this topic, we analyzed the reasons that lead to humanitarian intervention, a set of complex factors that go beyond legal aspects. We will move on to the analysis of the applicability of the two topics developed from the analysis of the case of the Democratic Republic of Congo.

**Democratic republic of congo case – the responsibility to protect and peacemaking and peacekeeping missions:** In our study, we will explore the case of Congo and the current Peacekeeping Mission. Repeated violence and armed clashes cause immense human suffering in several provinces of the Democratic Republic of the Congo (DRC). The DRC, rich in mineral resources, is the second largest country in Africa, is also the one of the poorest in the world - having been torn apart by conflict for most of the past 20 years. Decades of instability, armed conflict and inter-community violence have exposed millions of people to violations of international humanitarian law.

We can divide the conflict in two moments, as the origins of the current violence in the DRC are linked to the massive refugee crisis and spillover from the 1994 genocide in Rwanda.

After Hutu *génocidaires* fled to eastern DRC and formed armed groups, opposing Tutsi and other opportunistic rebel groups arose. The Congolese government was unable to control and defeat the various armed groups, some of which directly threatened populations in neighboring countries, and war eventually broke out.

From 1998 to 2003, government forces supported by Angola, Namibia, and Zimbabwe fought rebels backed by Rwanda and Uganda in what is known as the Second Congo War. While estimates vary greatly, the death toll may have reached over three million people. Despite a peace deal in 2002 and the formation of a transitional government in 2003, ongoing

<sup>21</sup> BINDER, Martin. Why Does UN Humanitarian Intervention Remain Selective?. Disponível em: <<https://www.oxfordresearchgroup.org.uk/blog/why-does-un-humanitarian-intervention-remain-selective>>. Acesso em 25 de junho de 2020.

<sup>22</sup> DOBOS, NED. Is U.N. Security Council Authorisation for Armed Humanitarian Intervention Morally Necessary?. Disponível em: <<https://link.springer.com/content/pdf/10.1007/s11406-009-9233-1.pdf>>. Acesso em: 25.06.2020.

<sup>23</sup> HOBBSAWAN, Eric. Globalização, democracia e terrorismo. São Paulo: Companhia das Letras, 7ª edição, 2007.

<sup>24</sup> BINDER, Martin. Why Does UN Humanitarian Intervention Remain Selective?. Disponível em: <<https://www.oxfordresearchgroup.org.uk/blog/why-does-un-humanitarian-intervention-remain-selective>>. Acesso em 25 de junho de 2020.

violence perpetrated by armed groups against civilians in the eastern region has continued, largely due to poor governance, weak institutions, and rampant corruption.<sup>25</sup> The First Congo War background has started in 1996 as Rwanda increasingly expressed concern that Hutu members of *Rassemblement Démocratique pour le Rwanda (RDR)* militias were carrying out cross-border raids from Zaire (DRC), and planning an invasion of Rwanda. The militias, mostly Hutu, had entrenched themselves in refugee camps in eastern Congo, where many had fled to escape the Tutsi-dominated Rwandan Patriotic Front (RPF) in the aftermath of the Rwandan genocide of 1994.

This escalating insecurity was merely a foretaste of what was to come: all-out war in the eastern Congo. The twin catalysts of the First Congo War would be the presence of Rwandan refugees and the decay of the Congolese state. In October 1996, North Kivu was invaded by the *Alliance des forces démocratiques pour la libération du Congo-Zaire (AFDL, Alliance of Democratic Forces for the Liberation of Congo-Zaire)*. (...) For the AFDL rebels, the war was a success: on 17 May 1997—just a day after an ailing Mobutu fled the country—they entered Kinshasa and Kabila declared himself president. Zaire was now the Democratic Republic of the Congo.<sup>26</sup>

The DRC faced the Second Congo War less than five years after the first war. The ensuing conflict has often been referred to as Africa's World War with nine countries fighting each other on Congolese soil.

When the Rwandan government fell out with Laurent Kabila—the man it had armed and supported all the way to the presidency—it launched the *Rassemblement congolais pour la démocratie (RCD, Congolese Rally for Democracy)* against him in the Kivus in August 1998. Both sides contributed to this new conflict, but Kabila provoked it when he asked all Rwandan troops to leave the country in July 1998. This triggered the deadliest war in modern African history. It involved eight nations, more than two dozen armed groups, and caused the deaths of millions of people, from violence, disease, and starvation. (...) This period, lasting between 1998–2003, brought with it some of the worst fighting North Kivu has seen. The communal nature of many of these groups—they recruited largely along ethnic lines, were based 34 north kivu locally, and often relied on the support of customary chiefs—prompted a counterinsurgency campaign by the Rwandan army and the RCD, which took the lives of thousands of civilians.<sup>27</sup> Meanwhile, in 2001, a bodyguard shot and killed President Kabila and his son, Joseph Kabila, was appointed president, which brought more insecurity to the DRC.

Although a peace agreement was signed in 2002, violence has continued in many regions of the country, especially in the east. Hostilities have continued since the ongoing Lord's Resistance Army insurgency, and the Kivu and Ituri conflicts. By 2008, the war and its aftermath had caused 5.4 million deaths, principally through disease and starvation,

making the Second Congo War the deadliest conflict worldwide since World War II. Another 2 million were displaced from their homes or sought asylum in neighboring countries.<sup>28</sup> After a brief summary of the DRC background, we focus on the Peacekeeping Missions to understand if the humanitarian intervention follow its principles and if the responsibility to protect succeed. For the First Congo War the U.N launched the United Nations Organization Mission in the Democratic Republic of the Congo MONUC. The Security Council called for a ceasefire and the withdrawal of foreign forces, and urged states not to interfere in the country's internal affairs. The Lusaka Ceasefire Agreement in July 1999 between the Democratic Republic of the Congo (DRC) and five regional States (Angola, Namibia, Rwanda, Uganda and Zimbabwe). In July 1999, the Security Council established the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) by its resolution 1279 of 30 November 1999.

Whereas the UN Mission – MONUC at the time – had a significant role in the 2006 elections, the role of the UN Organization Stabilization Mission in the DRC (MONUSCO) diminished in 2011 and was further marginalized during the latest presidential elections in 2018, mostly due to the Congolese Government's reluctance. Nevertheless, the SRSGs and Mission leadership have been effective in deploying their good offices role and encouraging political compromises in moments of tension, but alternatively, they have not been as vocal in demanding the implementation of political commitments, as many stakeholders would have preferred.<sup>29</sup>

Following the 2006 elections, MONUC remained on the ground and continued to implement multiple political, military, rule of law and capacity-building tasks as mandated by the Security Council resolutions, including trying to resolve ongoing conflicts in a number of the DRC provinces.

MONUSCO's effectiveness in protection has varied widely across both space and time, and has produced a mixed record. There are documented examples of both successes and failures. Where MONUC/MONUSCO has made a concerted integrated effort to protect civilians and deter violence, it has made a real difference. However, there is also evidence of failure to act, both proactively and in reaction to reports of attacks on civilians. MONUC/MONUSCO has, over time, been a laboratory for the development of protection of civilians (PoC) tools (that have become best practices for protection throughout peacekeeping) and the refinement of the operational concept of protection itself.<sup>30</sup>

<sup>28</sup> UNHCR DR Congo Emergency. Disponível em: <<https://www.unhcr.org/dr-congo-emergency.html>>. Acesso em 30 de junho de 2020.

<sup>29</sup> U.N. Assessing the of the United Nations Mission in the DRC / MONUC – MONUSCO. Disponível em: <<https://reliefweb.int/sites/reliefweb.int/files/resources/Assessing-the-effectiveness-of-the-United-Nations-Mission-in-the-DRC-MONUC-%E2%80%93-MONUSCO.pdf>>. Acesso em: 20 de junho de 2020.

<sup>30</sup> U.N. Assessing the of the United Nations Mission in the DRC / MONUC – MONUSCO. Disponível em: <<https://reliefweb.int/sites/reliefweb.int/files/resources/Assessing-the-effectiveness-of-the-United-Nations-Mission-in-the-DRC-MONUC-%E2%80%93-MONUSCO.pdf>>. Acesso em: 20 de junho de 2020.

<sup>25</sup> Global ConflictTracker. Violence in the Democratic Republic of Congo. Disponível em: <<https://www.cfr.org/global-conflict-tracker/conflict-violence-democratic-republic-congo>>. Acesso 29 de junho de 2020.

<sup>26</sup> STEARNS, Jason. The background to conflict in North Kivu province of eastern Congo. Disponível em: <<https://www.refworld.org/pdfid/51d3d5f04.pdf>>. Acesso em 30 de junho de 2020.

<sup>27</sup> STEARNS, Jason. The background to conflict in North Kivu province of eastern Congo. Disponível em: <<https://www.refworld.org/pdfid/51d3d5f04.pdf>>. Acesso em 30 de junho de 2020.

On 1 July 2010, the Security Council, by its Resolution 1925<sup>31</sup>, renamed MONUC the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) to reflect the new phase reached in the country. The new mission was authorized to use all necessary means to carry out its mandate relating, among other things, to the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the Government of the DRC in its stabilization and peace consolidation efforts. The Council decided that MONUSCO would comprise, in addition to the appropriate civilian, judiciary and correction components, a maximum of 19,815 military personnel, 760 military observers, 391 police personnel and 1,050 members of formed police units. Future reconfigurations of MONUSCO would be determined as the situation evolved on the ground.<sup>32</sup> In 28 March 2013, acting in support of the objectives of the Framework agreement for Peace, Security and Cooperation for the Democratic Republic of the Congo and the region, and answering the call of Governments in Africa's Great Lakes region, the Security Council unanimously adopted resolution 2098 (2013), by which it extended until 31 March 2014, the mandate of MONUSCO and created a specialized "intervention brigade" to strengthen the peacekeeping operation. Regarding the currently situation, it is important to highlight that the Security Council also approved the temporary deployment of 360 other formed police units provided that they are deployed to replace military personnel. MONUSCO's strategic priorities are to contribute to the following objectives: (a) Protection of civilians, (b) Support for the stabilization and strengthening of State institutions in the DRC and for the main governance and security reforms.<sup>33</sup> In conclusion to the operation, as an example of success of R2P, is important to highlight that the mission is most effective way to ensure the protection of civilians, including humanitarian personnel and human rights defenders, under imminent threat of physical violence, in particular violence emanating from any of the parties engaged in the conflict. Regarding to human rights protection, the mission accomplished the protection of civilians from violations of international humanitarian law and human rights abuses, including all forms of sexual and gender-based violence, to promote and protect human rights and to fight impunity. However, the mission, regarding the security situation, has certainly improved thanks to Peacemaking operations in DRC. There has been some progress, but also the political and social situation are not stable yet. MONUSCO should only withdraw, after the security sector is reformed thoroughly and stable governmental institutions are installed, which remain key to resolving the conflict.

## Conclusion

Primary, if the UN mission had not existed, most probably DRC would be facing a much more difficult scenario socially and economically speaking. Both Missions (MONUC/MONUSCO) also had a strategic impact in

preventing a recurrence of a major violent conflict, by using its presence to enable other international and national actors, including the private sector, to provide services and to stimulate the local economy and support democratic politics. Their role of has also been critical in monitoring, reporting, collecting, and sharing information related to human rights violations to support international criminal justice and the fight against impunity, including the International Criminal Court's prosecution of Thomas Lubanga, Germain Katanga, Bosco Ntaganda, and others. When facing a conflict such as the DRC, there are is easy solution—as long as the decrepit Congolese government is not able to guarantee or suppress the interests of its rivals in the east and the use of force keep to be challenging for neighbor States and International organizations. The Capstone Doctrine stated that the inclusion of international human rights law in the UN peacekeeping operations framework is essential, and the Universal Declaration of Human Rights should be a cornerstone. Thus, human rights are part of the core business of peacekeeping operations. Even if the peacekeeping operation is indispensable to provide stability and security and starts to show results, its permanence cannot be extended indefinitely, otherwise it will escape the scope of the responsibility to protect and be a pure and intervention instrument simple. In this sense, the study of the responsibility to protect proposes to the permanent members of the Security Council, that in the decision-making process of intervention or not, the protection of human rights is ahead. The responsibility to protect is essential to build peace and security and are one of the tool, but how to manage it, it must considered the human right standards, because as we study, when facing armed conflict, applying humanitarian international law, human rights ought to be present.

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<sup>31</sup> UNSCR. Resolution 1925. The situation concerning the Democratic Republic of the Congo. Disponível em: <<http://unscr.com/en/resolutions/1925>>. Acesso em 01 de julho de 2020.

<sup>32</sup> U.N. Assessing the of the United Nations Mission in the DRC / MONUC – MONUSCO. Disponível em: <<https://reliefweb.int/sites/reliefweb.int/files/resources/Assessing-the-effectiveness-of-the-United-Nations-Mission-in-the-DRC-MONUC-%E2%80%93-MONUSCO.pdf>>. Acesso em: 20 de junho de 2020.

<sup>33</sup> MONUSCO. Disponível em: <<https://monusco.unmissions.org/en/background>>. Acesso em 20 de junho de 2020.



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