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INTERNATIONAL LEGAL CONDITIONS FOR INTERVENTION IN AMAZON

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ABSTRACT

This article analyzes the legal conditions for an international intervention in Amazon as a response to damages caused by the exercise of territorial sovereignty of the State, which can be seen as a result of serious violations of international law. In the face of the current Amazon crisis, statements by State representatives and expert texts have suggested the necessity for intervention in Amazon. It could only happen as (i) a legitimate defense or (ii) a peacekeeping operation. The first case would obtain if an attack needed to be defended from, which does not exist in the current Amazon conjuncture. In the second case, there must be a real threat to international peace, which can be identified with serious violations of human rights, such as crimes against humanity, genocide and ecocide. In the current Amazon crisis, it would be possible to consider the practice of genocide and ecocide, once the intention to make the survival of human groups such as indigenous peoples impossible is demonstrated. If this condition is met, an express decision by the United Nations Security Council would be imperative to ensure the lawfulness of the action.

Keywords: Amazon; ecocide; genocide; intervention; Security Council; self-defense.

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CONDIÇÕES JURÍDICAS INTERNACIONAIS DE INTERVENÇÃO NA AMAZÔNIA

RESUMO

Trata-se de um artigo que analisa as condições jurídicas para uma intervenção internacional na Amazônia, enquanto resposta aos danos causados pelo exercício da soberania territorial do Estado, considerando que esse argumento pode ser visto como causa de graves violações ao Direito Internacional. Diante da atual crise amazônica, manifestações de representantes de Estados e textos de especialistas passam a sugerir a necessidade de intervenção na Amazônia. Esta só poderia acontecer como: (i) legítima defesa; ou (ii) operação de manutenção da paz. Na primeira hipótese, é necessário um ataque a ser repelido, o que não existe na atual conjuntura amazônica. Na segunda hipótese, deve haver uma ameaça real à paz internacional, que pode ser identificada com graves violações de direitos humanos, como o são os crimes contra a humanidade, o genocídio e o ecocídio. Na atual crise amazônica, seria possível cogitar a prática de genocídio e ecocídio, uma vez demonstrada a intenção de inviabilizar a sobrevivência de grupos humanos, como os povos indígenas. Satisfeita essa condição, seria imperativa uma decisão expressa do Conselho de Segurança das Nações Unidas nesse sentido, de modo a garantir a licitude da ação.

Palavras-chave: *Amazônia; Conselho de Segurança; ecocídio; genocídio; intervenção; legítima defesa.*

FOREWORD

The Amazon is not a *common heritage of humanity*, as there is no legal system in place to establish a mechanism for the internationalized management of the space where the Amazon biome is located in, as, for example, in the Area[3]. The Amazon is not a *world heritage site*, except the Central Amazon Conservation Complex (Amazonas, Brazil), which since 2000 has been included in the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List.

The Amazon is, however, an *international heritage*, as it is naturally scattered throughout the national territory of nine different States. Therefore, the fate of the Amazon is not the interest of one single country, however large its territory[4]. For that same reason, it can be said that the Amazon is a *national heritage* of each of these States, which exercise their territorial sovereignty therewith, having the right to exploit and harness its natural resources for their socioeconomic development.

The Amazon is also a *common concern of humanity*, as its protection implies the preservation of its rich biodiversity, the maintenance of an important carbon fixation environment to help the world face the challenges inherent to climate change, the equilibrium of hydrological balance – which influences the worldwide rainfall regime – and in ensuring respect for the human rights of local populations. In an international post-Nazi regime context, peace, security, human dignity and sustainable development became the cornerstones of international relations. Therefore, the Amazon is a special topic in all these aspects, which makes it urgent to look into the international legal consequences of the territorial management model adopted by the Amazon States, especially Brazil.

International law is built on the principle of sovereignty, according to which the various States are free to determine the strategies for using their territory. However, territorial sovereignty is self-limited from a democratic view of political relations (COSTA, 2011) by the establishment of legal norms that prohibit its exercise by a State from causing significant harm to other subjects of International Law. Over time, the legal limits to the exercise of sovereignty have been based on several aspects, notably on the valuation of human dignity and a balanced environment.

3 The Area is the seabed existing beyond the continental shelf of coastal states, which is a common heritage of mankind managed under Part XI of the United Nations Convention on the Law of the Sea (1982) by the International Seabed Authority.

4 Of the nine countries in the Pan-Amazon Region, Brazil stands out for having about 60% of the Amazon biome in its territory.

An act assigned to the State that violates an international legal obligation may be the object of accountability, due to the interest in acting by those who have their rights violated, whether they are a State, an organization or individuals (PIOVESAN, 2003). Reactions to violations of international law must, as a rule, be peaceful.

Since the 1980s, the Amazon States[5] have faced imputations for violation of human rights and environmental rights in the framework of International Relations, when using their national territory. More recently, due to the disclosure of data about the speeding up of deforestation and burning in the Brazilian and Bolivian Amazon, there have been manifestations about the violation of international law and the possible responses by the parties involved. Here, the statements of representatives of States and international organizations stand out, especially the President of France, Emmanuel Macron, and the publication of articles in journals, which have led to the question that this research intends to answer: is an intervention in the Amazon possible in light of international law?

Because it is a contemporary development of a theme that has never ceased to interest the international community, involving environmental preservation and the protection of human dignity in the Amazon in the context of the universalization of human rights and the fight against climate change, in *Direito Internacional para a humanidade*, Cançado Trindade (2005) justifies the analysis of the possibility of an intervention there, under current international law.

Therefore, at first, it is necessary to present the facts that will allow us to ascertain whether there is an international Amazon crisis, which would extraordinarily justify an intervention. Then, we will analyze current international law with regard to the intervention, highlighting the legal conditions for its enforcement. Finally, these hypotheses are combined with the facts, concluding that an intervention in the Amazon, in the current situation, would only be possible after a decision of the United Nations Security Council in face of the existence of a serious violation of human rights associated with the right to collective ownership of indigenous peoples in the face of non-demarcation of indigenous lands by the State, and environmental destruction as a strategy for the expulsion and extermination of local populations.

5 The following are the Amazon States: Bolivia, Brazil, Colombia, Ecuador, France, Guyana, Peru, Suriname, and Venezuela.

1 THE AMAZON INTERNATIONAL CRISIS

On August 22, 2019, the President of France said: "Notre maison brûle. Littéralement. L'Amazonie, le poumon de notre planète qui produit 20% de notre oxygène, est en feu. C'est une crise internationale. Membres du G7, rendez-vous dans deux jours pour parler de cette urgence"[6] (MACRON, 2019). In the same vein, the British Prime Minister stated that: "The fires ravaging the Amazon rainforest are not only heartbreaking, they are an international crisis" (JOHNSON, 2019).

Based on the assumption that the Amazon is the lung of the world, which is disputed (SILVEIRA, 2009), the statements by the representatives of France and the United Kingdom are impressive and not unreasonable: there is an international crisis, due to the acceleration of deforestation and burning of the Amazon biome.

Although not the main producer of oxygen[7], the Amazon rainforest is a gigantic carbon reservoir. From the moment the forest is burned, carbon dioxide is released into the atmosphere, which contributes to the greenhouse effect. Thus, the Amazon is not the lung of the planet because of oxygen production, but it is a huge carbon dam (TOLEDO, 2012, p. 115). Therefore, the Amazon is unquestionably important in maintaining the environmental balance and minimizing the damage caused by the greenhouse effect and climate change (TOLEDO, 2015).

Although the Amazon countries are not the largest emitters of greenhouse gases, the contribution of deforestation and burning of the Amazon forest to the increase of the emission of these gases is significant. In addition, the destruction of the forest also causes the loss of the richest terrestrial biodiversity. It can therefore be said that the constant and systematic decrease of native vegetation cover increases the climate vulnerability of all States.

During the 2018 election campaign, Brazil's presidential candidate Jair Bolsonaro promised the electorate to deconstruct the national policy to combat deforestation. He suggested removing Brazil from the Paris Climate Change Agreement ("SE NÃO MUDAR…", 2018), reduce the size of protected areas (AMORIM, 2019) and not demarcate indigenous lands (PUTTI, 2019), and enable the economic use of mineral resources found in

6 "Our home is burning. Literally. The Amazon, the lung of our planet, which produces 20% of our oxygen, is on fire. It is an international crisis. G7 members will meet in two days to address this urgent situation."

7 Most atmospheric oxygen is produced by phytoplankton.

these traditional lands (SOUZA, 2019), especially gold (SASSINE, 2019).

Once elected, Bolsonaro has taken or failed to take action, causing a significant worsening of socio-environmental indexes in the Amazon. In fact, between January and July 2019, the National Institute for Space Research (INPE) recorded 15,924 outbreaks of vegetation cleaning fires in the Amazon, which corresponds to a 35.6% growth over the same period in 2018. In June 2019 alone, there was an 84% increase in vegetation cleaning fires and a 278% increase in deforestation, compared with data obtained in June 2018 (INPE, 2019). In August, INPE identified a 222% increase in Amazon deforestation (WATANABE, 2019).

The establishment of an international legal system for sustainable development since the 1980s has not been enough to ensure that natural resources are used without compromising the environmental balance. It is not, therefore, an Amazon particularity, but a planetary generality. Unsustainability is characteristic of capitalism itself (MARQUES, 2015). Any attempt to change the global pattern of unsustainable exploitation of natural resources and the consequent deterioration of ecological coordinates necessarily involves a reformulation of the economic model. Not only in the Amazon, but all over the planet.

In any case, the current international legal system is characterized by a reaffirmation of the principle of national sovereignty over natural resources. In fact, principle 21 of the Stockholm Declaration on the Human Environment (1972) states that States are sovereign to exploit their natural resources in accordance with their own environmental policy. In the same vein, principle 2 of the Rio de Janeiro Declaration on Environment and Development (1992) reiterated that states have the sovereign right to exploit their own resources in accordance with their sustainable development policies. Also, the Convention on Biological Diversity (1992) says in its Art. 3 that States, in accordance with the United Nations Charter and the general principles of international law, have the right to exploit and harness their own biological resources according to their own environmental policies. Finally, the Framework Convention on Climate Change (1992) says in its preamble that States have a sovereign right to exploit their own resources in accordance with their environmental and development policies.

Reaffirming the sovereignty of States over their territory and natural resources does not mean that States can abuse their sovereign rights. On the contrary, the exploitation of natural resources found in a given territory

must be done by the right-holding State based on its legal obligations.

It is an *erga omnes* obligation of a State when exercising its territorial sovereignty not to cause significant damage to the environment of other States or to internationalized spaces. Accordingly, States should take all measures to ensure that activities in their territory are lawfully carried out. In this regard, should a State allow, by action or omission, the practice of acts that cause significant damage to the environment of another State or to the internationalized environment, a violation of International Law will obtain (UNITED NATIONS, 2006). As a result of that breach, the State imputed with the cross-border damage is bound by the obligation to remedy said damage. In turn, the subjects of international law that suffer the damage caused have an interest in standing before that State to demand reparation. This is the rationale inherent to the international legal system.

The current *Amazon international crisis* has not given rise to questioning the territorial sovereignty of the Amazon States (THE ECONOMIST, 2019), although the French newspaper *Le Monde* has published stories saying that the French Government considers the Amazon to be "un bien commun universel"[8] (L'AMAZONIE…, 2019). The President of France himself stated that the international status of the Amazon "est un chemin qui reste ouvert, qui continuera de prospérer dans les prochains mois et années, car l'enjeu est tel sur le plan climatique qu'on ne peut pas dire 'Ce n'est que mon problème'"[9] (AMAZONIE…, 2019).

This does not mean that the Amazon international crisis prevents a discussion on legal developments unlike that of internationalization. On the contrary, recent demonstrations have raised the possibility of adopting extraordinary legal measures. Realizing this, former Brazilian Army commander Eduardo Villas Bôas said that: "With hardly ever seen clarity, we are witnessing another European country, this time France, through its President Macron, making direct attacks on Brazilian sovereignty, which objectively include threats of employing military force" (VILLAS BOAS, 2019).

Faced with the current Amazon international crisis and speculation on its international legal consequences, it is urgent to discuss the possibility of intervention in the Amazon, which is one of the anticipated responses to international crisis situations.

8 "a common universal good".

9 "is a path that remains open and will continue to prosper in the coming months and years, as the challenge is such on the climate level that one cannot say 'This is my problem alone'".

2 NONINTERVENTION: INTERNATIONAL LEGAL PRINCIPLE

With the adoption in San Francisco (United States) of the United Nations Charter, under the terms of its Art. 2, § 4, Member States shall avoid the threat or use of force in international relations that may compromise the territorial integrity or political independence of any State, including any non-member states. The stated intention to use force in certain events may constitute a threat that is prohibited (CIJ, 1996).

The principle of nonintervention is identified as a consequence of the principles of sovereignty, self-determination and equality. This is to prevent states from taking advantage of an economically or militarily favorable position to enter the exclusive area of competence of another State in order to help resolve their issues, resolve them in their place, or force them to resolve them as they wish (DIHN; DAILLIER; PELLET, 2003).

Under the terms of art. 2, § 7, of the same instrument, as with other members of the international community, the United Nations *per se* cannot intervene in the internal affairs of the Member States, which are not required to present them in an international forum. In line with this conventional option, the International Court of Justice, in judging a Military Activities Case involving Nicaragua and the United States, upheld the ban on States from acting directly or indirectly, individually or collectively, in the reserved domain of other States. Thus, as the management of the territory is part of the State's reserved domain, the other members of the international community may not intend to carry out foreign or international interventions there (CIJ, 1984).

2.1 Exception to the principle of nonintervention

There are exceptions to the principle of nonintervention. States may intervene in another State *solely* in the circumstances provided for in the United Nations Charter itself. Beyond this validity framework, any initiative becomes an international wrongful act. Therefore, the ban on the use of force in International Relations is not absolute, but extraordinary (DIHN; DAILLIER; PELLET, 2003, p. 452). This establishes a legal framework whereby the sovereignty of States, especially those that are weaker in economic and military terms, is protected against colonialist initiatives. According to this rationale, the right of conquest as a strategy of territorial appropriation is contrary to international law (CHAGAS;

HECKTHEUER; HECKTHEUER, 2017, p. 853).

As mentioned, the principle of nonintervention is directly linked to the principle of "sovereign equality" (COLOMBO, 2008, p. 7). In fact, under the terms of Art. 1, § 2 of the United Nations Charter, it is the purpose of that international organization to foster friendly international relations based on a respect for the principle of equality of rights and self-determination of peoples, in which intervention is seen as an exceptional remedy.

Thus, there are extraordinary situations in which the international legal system itself recognizes the right of one State or group of States to intervene in another State. In order for intervention to be lawful, it must meet the provisions of the United Nations Charter[10] or any other instrument of which the State the intervention is to take place in freely participates. Even in the case of intervention by other international organizations, it is necessary that the principles laid down in the United Nations Charter are met and that this international organization is notified on all measures taken (HOFFMANN, 2003, p. 22).

3 USE OF FORCE IN INTERNATIONAL LAW

The United Nations Charter provides that member states of that international organization may make use of force on two strict cases: self-defense or compliance with a decision by the Security Council. In these instances, the principle of nonintervention is removed.

3.1 Self-defense

In the exercise of self-defense, it is up to the Security Council to verify its pertinence, determining whether there really is an act of aggression or whether the act is justifiable as a domain reserved to the State. In fact, Art. 51 of the United Nations Charter states that nothing can undermine the inherent right to self-defense, except an armed attack against a Member State. This means that the right to self-defense exists in spite of the Security Council. It is an *erga omnes* law inherent in International Law itself (DIHN; DAILLIER; PELLET, 2003, p. 959-960).

Although self-defense may occur preemptively, it is necessary for the Security Council to make the conventionality control of the State act. When this happens, it can be ascertained whether it was not a case for legitimate

10 All nine states in the Pan-Amazon region are members of the United Nations and are consequently bound by the United Nations Charter.

defense, which would make the use of *ab initio* force illegal. That is why such a right must be exercised very carefully by the States. If, in turn, the Security Council finds that there was indeed an act of aggression, the use of proportional force is considered a regular exercise of law.

Thus, in order for self-defense to be an internationally lawful act, it is necessary for the State that exercises it to have been previously assaulted. An act of aggression by another state must have been practiced, which corresponds to "armed" violence (DIHN; DAILLIER; PELLET, 2003, p. 960). Indeed, under United Nations General Assembly Resolution 3314 (XXIX), an act of aggression is the use of armed force by one State against the sovereignty, territorial integrity, or political independence of another State. Based on humanitarian law, an attack is always practiced by military forces (SCHMITT, 2011) in order to cause damage to the enemy (VITÉ, 2009).

On this topic, the International Court of Justice has declared that States have the "fundamental right" to survival (CIJ, 1996). Whenever that is at risk, even in circumstances where weapons are not employed, the threatened State's right to self-defense can be exercised. However, the unarmed act must be extremely serious, undermining the very existence of the State as such. In any case, whether armed or not, self-defense presupposes an attack, which is always intentional (DINSTEIN, 2004, p. 191).

One can imagine that an environmental attack could be made on the territory of a State, giving it the possibility to defend itself legitimately. In addition to being severe, transboundary environmental damage must be the purpose of the action taken. It is not enough for the source of the damage to be the space of jurisdiction or control of a State, it is not enough that there is a risk of significant cross-border damage, it is necessary that the purpose of the action is to attack the neighboring State, endangering its existence as a State.

One can imagine, for example, direct incursions of pollution or hazardous substances into the territory of neighboring States with the intention of causing them serious damage, which can be interpreted as an attack to be repelled by self-defense. Similarly, the environmental consequences of using chemical, biological or nuclear structures can also be interpreted as acts of attack, depending on intentionality, to be demonstrated on a case-by-case basis (ECKERSLEY, 2007).

Of course, the concern of a State with its natural environment is an

essential interest, which gives it the right to defend itself by the means provided for in International Law (CIJ, 1997). However, it is not because the environment is an essential interest of the State that it has the right to intervene in the reserved domain of other States. Environmental damage would be sufficient only to give rise to self-defense if it proved itself to actually cause enough damage to extinguish the State[11].

3.2 Legitimate foreign defense in the Amazon

On August 5, 2019, Stephen M. Walt[12] published an article in *Foreign Policy* arguing that foreign intervention in the Amazon is a matter of time before the "great powers" act to halt climate change. Walt identifies the responsibility of the Brazilian State in increasing climate change, which endangers the survival of other States and would justify the exercise of self-defense. "Brazil happens to be in possession of a critical global resource – for purely historical reasons – and its destruction would harm many states if not the entire planet" (WALT, 2019).

The legitimate defense of a foreign State would only be possible in the Amazon if the deforestation process was treated as an intentional attack against another State, that is, "any operation or act with the effect of infringing upon the State or its fundamental elements" (GOUVEIA, 2013, p. 181). When the Brazilian State exercises its territorial sovereignty by causing the speeding up of the deforestation and vegetation cleaning burning process of the Amazon, there is no intention to jeopardize the existence of other States. Therefore, there is no attack via the environmental damage caused and, consequently, there is no possibility of self-defense by other States.

So, Walt's view is incorrect, as it interprets what is happening in the Amazon as an act of aggression to be answered via legitimate defense by the great military powers. There is no demonstration that the Brazilian State intends to cause significant damage to other States, notably France, through the destruction of the Amazon biome. In fact, French Guiana is part of the French State, which allows the French president to state that: "[…] la France est en Amazonie. La plus grande frontière extérieure de

11 By way of example, we can mention the challenge facing some island countries ((Maldives, Nauru, Tuvalu, Fiji, Kiribati, Marshall Islands, etc.), whose terrestrial territories are threatened by rising sea levels due to the effects of climate change. For these countries to be able to act in self-defense, it would be necessary to identify the *State responsible* for climate change. With absolute certainty, it can be said that such a state is not Brazil. See Trindade (2019).

12 Stephen M. Walt is a professor of international relations at Harvard University (Cambridge, USA).

la France c'est entre la Guyane et le Brésil, donc nous sommes là-bas"[13] (REUTERS, 2019). However, the territorial proximity does not make it possible to identify an attack by the Brazilian State against the French State in the Amazon, which would allow it to defend itself legitimately.

3.3 Peacekeeping

With the possibility of self-defense in the Amazon out of the way, we will now look into whether there is a threat to or disruption of international peace, which could lead to international intervention. In that case, due process of law as laid down in Chapter VII of the United Nations Charter, according to which the Security Council is the protagonist, must be observed. In fact, it is this body that is competent to identify the facts that correspond to a threat or breach of international peace and, consequently, may impose coercive measures (DIHN; DAILLIER; PELLET, 2003).

Based on Art. 42 of the United Nations Charter, it is possible for the United Nations Security Council to decide upon the use of force against States that violate the obligation to prevent the practice of a destructive activity that endangers peace in their territory or space of national jurisdiction.

Because that is an extraordinary situation, where the exercise of violence becomes lawful, the Security Council must expressly authorize the intervention, because what guarantees the lawfulness of the act is its form. Pursuant Art. 39 of the United Nations Charter, it is for the Security Council to determine whether there is a threat or breach of international peace, thus allowing it to order measures for the maintenance or restoration of peace.

Pursuant Art. 48 of the United Nations Charter, once the peacekeeping intervention is authorized, the States shall carry out the decision on behalf of that international organization. In that case, it would not be a foreign intervention, but an international intervention, as it would be carried out under the auspices of the international organization.

3.4 Serious violations of environmental rights as a threat to peace in the Amazon

13 "[…] France is in the Amazon. France's longest external border lies between Guyana and Brazil; so, we are there."

On August 24, 2019, Franklin Foer[14] published an article in *The Atlantic* stating that:

> *The destruction of the Amazon is arguably far more dangerous than the weapons of mass destruction that have triggered a robust response. The consequences of the unfolding disaster – which will extinguish species and hasten a worst-case climate crisis – extend for eternity. To lose a fifth of the Amazon to deforestation would trigger a process known as 'dieback,' releasing what The Intercept calls a 'doomsday bomb of stored carbon.' But the case for territorial incursion in the Amazon is far stronger than the justifications for most war. In the meantime, the planet chokes on old notions of sovereignty*.

It is an incisive argument that what happens in the Amazon is more serious than having weapons of mass destruction. For this reason, deforestation in the Amazon is a situation that poses a risk to peace, requiring a response that is up to the international community. According to the author, other wars were fought for much less.

It is very difficult to *a priori* define which facts put international peace at risk. As will be seen, serious human rights violations have been considered enough to require coercive peacekeeping measures. More difficult is the discussion of the interactions between those and violations of environmental rights. Some authors argue that environmental degradation can be a threat to peace (GILLEY; KINSELLA, 2015). By moving away from the classic view that peace means no armed conflict, an international intervention could be deployed in a more broad way, so as to include the environmental issue (KEMER; PEREIRA; BLANDO, 2016, p. 138).

From this assumption, and considering that an intervention for peacekeeping is extraordinary, it must be concluded that only severe transboundary environmental damage would make it possible, which does not solve the problem. The difficulty then becomes defining what is severe transboundary environmental damage. What is understood as "territorial integrity" is currently viewed as "ecosystem integrity" (ECKERSLEY, 2007).

To the extent that there is an attempt to ensure international peace, environmental damage must be perceived beyond the national borders of a State. This is an aspect of the phenomenon that is less problematic to demonstrate. The big challenge here is to identify the degree of importance of the environmental damage. Its severity must be directly proportional to the risk of causing international tensions to rise.

14 Franklin Foer is a journalist and member of the New American [Foundation].

The severity of the effects of the current Amazon deforestation process is not questioned. It is also notorious that the impacts of this process are noticed beyond the borders of the Amazon States. Finally, these facts have effectively caused the increase in international tensions, as demonstrated by recent statements by representatives of the Brazilian and French states. However, it is not clear that the situation is a threat to international peace. For Foer, there is no doubt that is the case. Once the necessary material elements have been identified, it is up to the Security Council to identify the threat to peace in the actual case and to order an intervention in the Amazon, provided the States involved are members of the United Nations, as is the case of Brazil and France.

3.5 Serious violations of human rights as a threat to peace in the Amazon

In addition to serious violations of environmental rights, serious violations of human rights are also enough to jeopardize international peace, which in turn may underlie the Security Council's decision in favor of humanitarian intervention (SIPELER, 2007). This is due to the fact that the protection of human rights is not a matter for the reserved domain of States (DIHN; DAILLIER; PELLET, 2003). For this reason, it is not necessary to demonstrate the cross-border nature of the facts for them to be of interest to the international community. The State must exercise its territorial sovereignty as a means of realizing human rights (CANÇADO TRINDADE, 2011).

For humanitarian intervention to be possible, elements related to massive, systematic and large-scale violations must obtain (SPIELER, 2007). Some authors even claim that intervention is only possible in two cases: mass murder and slavery (MARTIN, 2005). Others claim that an intervention can only be carried out in the face of genocide (FIXDAL; SMITH, 1998). Finally, there are those who suggest humanitarian intervention in the case of crimes against humanity, which demand an immediate response from the international community (GUERREIRO, 2000).

Despite the various doctrinal schools, it can be said that there is a consensus that crimes pertaining to the *ratione materiae* competence of the International Criminal Court (ICC) are serious violations of international law, a response to which may extraordinarily be an international intervention

authorized by the UN Security Council as a peacekeeping measure.

In this context, the forced relocation of populations is considered a serious violation of human rights. In fact, the Statute of the International Criminal Court (ICC, 1998), in its Art. 7, *d*, defines as a crime against humanity the deportation or forced relocation of a population, when carried out in the context of widespread or systematic attack. Often, forced population transfers are accompanied by acts of genocide aimed at ethnic cleansing (TPIY, 2009), which can also be examined by the ICC.

With the consecration of the notion of crimes against humanity and genocide as serious violations of international law, the notion was developed that these obligations are *jus cogens*, and are thus not a matter of the reserved domain of States, but rather the interest of the international community as a whole (PARAGUASSU, 2016). The principle of "universal jurisdiction" is a consequence of this, according to which all States can act to punish individuals charged with crimes against humanity and genocide (GÓMEZ, 2008, p. 95). In the exercise of universal jurisdiction to prosecute serious human rights violations, one can mention the examples from Spain[15], France[16], Germany[17], and Italy[18], which had the opportunity to expressly acknowledge that this is a generally valid international legal rule.

In the light of the principle of universal jurisdiction to combat impunity for criminals against humanity[19], the existence of the *erga omnes* international legal obligation to intervene to the aid of victims of serious human rights violations has been discussed. The question is whether States can use force outside their territorial space or national jurisdiction to prevent the occurrence of international wrongful acts. Despite good moral intent, States have no humanitarian intervention duty (DIHN; DAILLIER; PELLET, 2003, p. 459). However, this does not mean that humanitarian

15 For example, Spanish Supreme Court, Criminal Court. Appeal to Quash a Judgment of February 25, 2003, n. 803/2001; National Hearing, Criminal Court. Appeal Abbreviated Procedure, January 10, 2006, n. 196/005.

16 For example, Court of Cassation of France, Criminal Court. Inadmissibility of Appeal of Cassation of June 3, 1998, Klaus Barbie Case, Appeal Number: 87-84240.

17 For example, Düsseldorf Superior Court of Justice. Nikola Jorgic Case, Judgment of September 26, 1997, IV-26/96 2 StE 8/96.

18 For example, the SS Captain Erich Priebke Case. Extradited from Argentina to Italy on November 2, 1995. See Bariloche Federal Court, May 31, 1995, and Federal Chamber of Appeals, August 23, 1995, and Superior Court of Justice, November 2, 1995. Final judgment by the Military Tribunal of Rome on July 22, 1997.

19 In fulfillment of the duty of remembrance, we recall that people charged with crimes against humanity in Brazil during the dictatorship period are still unpunished due to the application, domestically, of the Amnesty Law, considered by international bodies, especially Inter-American Court of Human Rights, as contrary to the imperative rule of general International Law. See Toledo and Bizawu (2018).

intervention is not possible. On the contrary, intervention is possible, as long as it is determined by an appropriate international body, as provided for in Chapter VII of the United Nations Charter[20].

3.5.1 Crimes against humanity in the Amazon as a threat to peace

On November 19, 2018, lawyers François Zimeray[21] and Jessica Finelle published an article in *Le Monde* stating that some projects presented by Bolsonaro, then a candidate for President of Brazil, if implemented, "pourraient même relever de la qualification de crimes contre l'humanité, notamment en raison de transferts forcés de populations indigènes"[22].

Major human relocations can happen when large engineering works are carried out, such as the construction of hydroelectric plants. These relocations can also take place as a reaction to the expansion of the agricultural frontier or an increase in mining activities. One can also imagine that deforestation and vegetation cleaning fires are used as instruments to expel indigenous peoples from their traditional lands. In all the above situations, there would be acts of compulsory removal of indigenous people, which is a condition for a crime against humanity.

However, there is forced relocation only when the population affected by said relocation has not demonstrated prior, free and informed consent. There are a number of practical difficulties in demonstrating the existence of prior consultation[23] to indigenous and traditional peoples. What matters here is only to point out that, if the consent of these human groups regarding their relocation has not been duly obtained, any act to that effect should be treated as forced relocation. In fact, unlike land abandonment, forced relocation necessarily amounts to an involuntary movement driven by repressive mechanisms (DEMETRIO; KOZICKI, 2019, p. 156).

Besides being forced, the relocation of indigenous or traditional populations will only be considered a crime against humanity when carried out in a context of widespread or systematic attack (Amani; Smis, 2017).

20 For example, the United Nations Security Council identified as a threat to international peace the situation arising from the unilateral declaration of independence in 1965 by the white minority in Southern Rhodesia and the apartheid regime in South Africa, which existed between 1948 and 1991.

21 Since 2008, François Zimeray has been a French diplomat and, from 1999 to 2004, he served as Member of the European Parliament.

22 "can even qualify as crimes against humanity, especially because of the forced relocations of indigenous populations."

23 A fellow professor, Dr. Liana Amin Lima da Silva, has excelled in researching the right to consultation and free, prior and informed consent of indigenous and tribal peoples in Latin America.

By widespread or systematic attack against an indigenous population, for example, one should understand the practice of acts contrary to the permanence of such a population in their traditionally occupied lands, in compliance with a State plan contrary to their existence (BUSSY, 2015). Discrimination against the population must be the reason for the forced relocation, which takes place during a widespread or systematic attack (TPIR, 2003).

When the State proposes to build giant hydroelectric plants, expanding the agribusiness frontier, or deploying mining plants in the Amazon, which force the relocation of indigenous or traditional populations, one can only speak of a crime against humanity if the end of the deployed project is to attack these human groups.

Despite the dramatic situation, projects in the Amazon do not appear to be a strategy for attacking indigenous or traditional peoples. The purpose is to implement economic development policies, which indirectly cause serious damage to their lives. Given this, it is impossible to treat population movements resulting from the deployment of works in the Amazon as a crime against humanity.

3.5.2 Genocide in the Amazon as a threat to peace

Within the international system of human rights protection, the right to collective property of lands traditionally occupied by indigenous peoples has been guaranteed by international case law as a right associated with the material and immaterial dependence of their members on the territory (TOLEDO; BENEDETTO, 2018). In fact, the Inter-American Commission on Human Rights (IACHR) – an international body with jurisdiction to look into violations of international human rights law[24] – has ruled that the exercise of sovereignty by a State does not imply the right to deny the existence of indigenous peoples on their traditional lands (CtIDH, 2012).

When living conditions are enforced on an ethnic group in order to cause their physical destruction, this amounts to the practice of genocide. Therefore, it is an imperative obligation of International Law to abstain from the practice of acts in view of the disappearance of an Amazon indigenous community (TOLEDO, 2019b). To the extent that collective property is an indispensable condition for the survival of an indigenous

24 Of the nine Amazon States, the following are not part of the American Convention on Human Rights: France – which is bound to the European Convention on Human Rights (1950) –, Guyana and Venezuela.

people, an act that does not guarantee them the exercise of this right can be considered a genocidal act. It is possible that the violation of indigenous collective property effectively amounts to a threat of destruction of the group as such.

In relation to the Brazilian State, IACHR stated in 2018 that its domestic law gives priority to collective property over private property. Because of this and in view of the pertinent international obligations, Brazil should have already completed the process of demarcation and de-intrusion of indigenous lands (CtIDH, 2018). Without this, it is impossible to guarantee the right of collective property to these peoples, pursuant Art. 21 of the American Convention on Human Rights, which could then endanger their survival as a group.

Regarding his intention not to demarcate indigenous lands, the President of Brazil, in a speech at the United Nations General Assembly, stated that: "[…] Brazil will not increase its area already demarcated as indigenous land to 20%, as some heads of State would like it to happen" (VERDÉLIO, 2019b). He added, on the demarcated indigenous lands, that:

> The natives do not want to be poor large landowners on top of rich lands. Especially on the richest lands in the world. This is the case of the Yanomami and Raposa Serra do Sol reserves. In these reserves, there is a great abundance of gold, diamond, uranium, niobium and rare earths, among others.

When the President of Brazil declares his willingness to prevent new demarcation of indigenous land and to revise the already-demarcated ones (VERDÉLIO, 2019a), there is a factual context favorable to genocide in the Amazon, since it is a statement that intentionally intends to deprive certain human groups of material conditions for their survival as a group. If land demarcation that ensures the right of collective property is a condition for the survival of a particular indigenous people, the omission of the State can be interpreted as a genocidal act, giving rise to international liability.

Historically perpetuated genocide against indigenous peoples is currently advancing in another format, that of taking over their traditional lands and restricting their autonomy (HAGINO; QUINTANS, 2015). The prohibition of genocide is a *jus cogens* obligation recognized for decades (RODAS, 1974). Therefore, even if the State denounces the Pact of San Jose, Costa Rica, the ban on genocide remains legally binding.

3.5.3 Ecocide in the Amazon as a threat to peace

On September 15, 2016, the Office of the Prosecutor of the International Criminal Court published a document entitled *Policy Paper on Case Selection and Prioritization*, which reads as follows:

> *In this context, the Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in*, inter alia*, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land* (OTP, 2016).

This is an important statement, because the Prosecutor's Office has the function of initiating criminal proceedings with the ICC. Just as the importance of the ICC Statute for the definition of a serious violation against humanity has been analyzed, it must be noted that taking up the discussion on ecocide again was caused by the workings of the international criminal justice system. Indeed, the possibility of bringing environmental damage into the exercise of ICC jurisdiction is what part of the law theory has called ecocide (BROCHADO NETO; MONT'ALVERNE, 2018).

Although recently resumed, the law theory discussion on ecocide began with the execution of the first international treaties on environmental protection, against the background of the use of Agent Orange by the United States during the Vietnam War (ZIERLER, 2011). From the outset, the notion of ecocide has been associated with significant environmental damage on the territory of a State, produced to endanger the survival of its inhabitants (SALAZAR, 2017).

Ecocide has the importance of dramatically demonstrating the necessary link between a balanced environment and human dignity (COLOMBO, 2007). It is not an environmental protection element in itself. It is thus possible to indirectly destroy a human group by directly destroying its territory, fauna, flora and ecosystem as a whole (TABÍO; CORONA, 1972).

The valuation of the environmental matter occurs indirectly, since the protection of the environment is a condition for the survival of certain human groups. As with genocide, acts of ecocide are not directed at an individual, but at a group of human beings, considered in their entirety (FRAGOSO, 1973). There is therefore a close connection between genocide and ecocide, although genocide is broader than the latter (GREENE, 2019).

As a result, ecocide only takes place in the face of State action or omission, the purpose of which is to destroy a particular human group

by irreparably compromising the environmental coordinates in which they live. This is the case, for example, of the destruction of forests in Bosawás, Nicaragua, which has been viewed by indigenous Mayagna leaders[25] as a practice of ecocide (FERMÍN, 2014).

On the ecocide in the Amazon, the President of France told the press on August 23, 2019 that: "Il faut stopper un processus de déforestation industrialisé un peu partout, on a véritablement un écocide qui est en train de se développer à travers l'Amazonie et pas simplement au Brésil"[26] (REUTERS, 2019).

On that matter, Lloyd Axworthy[27] and Allan Rock[28] wrote an article whose translation was published in *O Estado de S. Paulo* newspaper. In that text, the authors say that sovereignty should not be a barrier to intervention when a State is liked to practices of genocide or other mass atrocities within its territory. They go on to say that policies to speed up global warming are mass atrocities related to environmental destruction. An example of such atrocities would be the forest fires in the Amazon, which amount to an ecocide to be confronted directly by other States by means of international intervention (AXWORTHY; ROCK, 2019).

A humanitarian intervention on the grounds of ecocide being committed in the Brazilian Amazon would only be possible if it is shown that deforestation and burning occur with the purpose of exterminating human groups. This could be sustained in relation to situations such as the one identified as the "day of fire", where, through an organized action, farmers intentionally set fire to the Amazon rainforest in order to demonstrate their interest in working in those areas (MPF, 2019, p. 1). If the intention to endanger the existence of certain traditional populations is proven, it would be possible to speak of ecocide in the Amazon.

CONCLUSION

The effects of the destruction of the Brazilian Amazon are not restricted to Brazilian territory and can reach its Amazon and non-Amazon neighbors. Despite being a rule of International Law, nonintervention is not absolute.

25 The Inter-American Court of Human Rights has already tried a case involving the Mayagna indigenous people. See Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua, judgment of August 31, 2001.

26 "It is necessary to stop an industrialized deforestation process everywhere, there is a true ecocide developing across the Amazon, and not just in Brazil."

27 Chair of the World Refugee Council and former Minister of Foreign Affairs of Canada.

28 President Emeritus of the University of Ottawa and former Canadian Ambassador to the United States.

There are instances where the legal system provides for intervention in the internal affairs of a State through the use of foreign or international force, such as self-defense and peacekeeping.

In the first case, there must be a previous act of aggression or attack, which traditionally corresponds to armed aggression. In recent times, self-defense is also allowed when the survival of a State is at stake, even without the use of weapons, which is important when thinking about environmental damage. In any case, it is indispensable for the fact to be considered an attack on the survival of the State, that is, that it is an intentional act that endangers the constitutive elements of that State. In this sense, however serious, the destruction of the Amazon is not an act of attack against another State, however close it is, as is the case with France. Therefore, one cannot speak of the exercise of self-defense in the face of the current Amazon international crisis.

In the second instance, the existence of a threat or disruption of international peace is determined solely by the United Nations Security Council, which may order the use of force against a Member State to restore the peace. No State is given the right to unilaterally adopt peacekeeping measures on foreign territory. Therefore, an international intervention in the Amazon would only be possible by a decision of the Security Council, because Brazil is a member of the United Nations.

Despite the importance of human rights for contemporary international society, as a rule, there is no humanitarian intervention law. As there is no armed conflict in the Brazilian Amazon, humanitarian intervention would only be possible if the Security Council identified the rupture or threat to peace by serious human rights violations, such as crimes against humanity and genocide. In the Amazon context, the figure of ecocide, which has connections with genocide, can also be indicated as a hypothesis of serious violation of human rights.

As a crime against humanity in the Amazon threatening international peace and giving rise to international intervention, one can consider the forced relocation of indigenous peoples from their traditional lands as a result of the deployment of major State structural projects. Despite the seriousness of this situation, which is related to a lack of prior, free and informed consent by these populations, a crime against humanity would only obtain if that was intended to exterminate these people, which is not the case in the current Amazon crisis.

The violation of the right to collective property can be identified as

genocide in the Amazon, which would threaten international peace, giving rise to international intervention, the lack of State demarcation and de-intrusion in those lands. If the survival of the Amazon indigenous people, who depend on their lands to exist as a group, is intentionally endangered, one can speak of the practice of genocide.

As an ecocide in the Amazon, threatening international peace, thus giving rise to international intervention, deforestation and forest vegetation cleaning fires can be considered as a strategy for the extermination of certain human groups. In that case, it is imperative to demonstrate that the environmental damage is being caused with the ultimate purpose of compromising the existence of a population as such.

This concludes the possibility of genocide and ecocide, which could be considered a material element to substantiate a decision of international intervention in the Amazon. However, the presence of the material condition is not enough; the formal condition must also be met, namely, a ruling by a competent international body, such as the United Nations Security Council.

There is therefore no *legal* possibility for unilateral foreign intervention to maintain international peace. Such an initiative, happening outside the UN control mechanism, should be treated as an international wrongful act by the intervening States, as happened, for example, in Yugoslavia[29] in 1999 and in Iraq[30] in 2003.

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29 From March 24 to June 10, 1999, during the Kosovo War, without the prior authorization of the United Nations Security Council, the air force linked to the North Atlantic Treaty Organization (NATO) bombed Yugoslavia with the intention of stopping acts of violence by the government against the Albanian minority. On this NATO intervention, the Independent International Commission on Kosovo (IICK) published a report in October 23, 2000, which considers the act as illegal. This unlawfulness is only due to the absence of formal requirements for intervention, as the material conditions (serious violations of human rights) obtained. See IICK. *The Kosovo Report*. Oxford: Oxford University Press, 2000.

30 On March 19, 2003, without the prior permission of the United Nations Security Council, the armed forces of the United States, the United Kingdom, Australia, and Poland invaded Iraq to take up their weapons of mass destruction. This was regarded by then-UN Secretary-General Kofi Annan as an illegal act. On the matter, see SIFRIS, Ronli. Operation Iraqi Freedom: Unites States v Iraq – the Legality of the War. *Melbourne Journal of International Law*, v. 4, 2003, p. 521-560.

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