

The Observance of International Humanitarian Law by the European Union

Roberto Luiz Silva¹
Flávia Resende Ferreira e Melo²

ABSTRACT: The present article aims to analyze the observance of International Humanitarian Law by the European Union. Firstly, the paper aims to identify the norms of International Humanitarian Law in the legal order of the European Union. Thereafter, the applicability of International Humanitarian Law is outlined. Subsequently, an analysis is made of the promotion of International Humanitarian Law by the European Union. Lastly, it concludes that the European Union acknowledges International Humanitarian Law in its legal order and military operations, mainly in case of armed conflicts. However, it is in the promotion of the observance of International Humanitarian Law that the European Union plays its most relevant role.

KEY-WORDS: International Humanitarian Law. European Union. Armed conflicts. Military operations.

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I. INTRODUCTION

According to the International Committee of the Red Cross, International Humanitarian Law - IHL aims to limit the effects of armed conflicts and to protect the people that do not take part in the hostilities or do not participate in them anymore³, is fundamental to ensure that its norms and principles are observed by all actors that have the capacity in International Law – *in casu* States and International Organizations -, in order to minimize the negative effects of the armed conflicts. In this respect, the European Union (EU), as an International Organization, has had an increasing influence in the observance of International Law in situations of armed conflicts (BRESLIN, 2010) due to the competence attributed to it by Art 24.1 of the European Union Treaty, to act in foreign policy matters, respecting not only the principles of democracy, Human Rights, fundamental freedoms, human dignity and respect to the fundamental principles of International Law, but also the promotion of the observance of International Humanitarian Law, even being an object of non-binding instruments, as the so-called “Updated Guidelines”. Moreover, such references are directed, as a rule, to third States and other international actors, excluding their own acts and the Member States (CARRON, 2016).

This paper aims to present the observance scenario of the norms of International Humanitarian Law in the European Union, and as a starting point, it has its legal order, basis for a more accurate analysis of the applicability of International Law in its military operations and in the promotion of International Humanitarian Law.

¹Professor of International Law at the Federal University of Minas Gerais, Bachelor of Laws at the Federal University of Minas Gerais - UFMG (1988), LL.M in Europäische Wirtschaftsrecht at the Universität zu Köln (1992), Doctorate in Law at the Federal University of Minas Gerais - UFMG (1994), Specialization in International Law at the United Nations - UNITAR (1999), Postdoctorate at The University of Texas (2005) and Senior Postdoctorate at the Universität de Barcelona (2015-2016).E-mail: roberto-silva@ufmg.br. Lattes: <http://lattes.cnpq.br/8780363284231214>

² Master’s student in Law at the Federal University of Minas Gerais - UFMG, Bachelor of Laws at the Pontifical Catholic University of Minas Gerais – PUC/MG (1996), Bachelor of Administration with Specialization in Foreign Trade at the Union of Business and Administration - UNA/BH (1995) and MBA in Foreign Trade Management and International Business at the Getúlio Vargas Foundation- FGV (2003). E-mail: flaviarfmeo@gmail.com. Lattes: <http://lattes.cnpq.br/5100722108413561>

³ INTERNATIONAL COMMITTEE OF THE RED CROSS. What is International Humanitarian Law? Advisory Service on International Humanitarian Law. Geneva, Dec. 2014. Available at: https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf. Accessed: 10 abr. 2020.

II. INTERNATIONAL HUMANITARIAN LAW IN THE LEGAL ORDER OF THE EUROPEAN UNION

The implementation of International Humanitarian Law encompasses all the measures that should be taken to ensure that the norms are respected. The measures should be applied not only during armed conflicts but also in peaceful times. The European Union is committed to respecting International Law in its foreign relations and highlights the importance of training and dissemination of International Humanitarian Law norms.⁴The Council of the European Union also shows concern with violations of International Humanitarian Law and “[...]The EU reaffirms its intention to improve coherence, complementarity and coordination between its various policies and actions in promoting and ensuring respect for IHL in all circumstances.”⁵ Nevertheless, the European Union is not a party to the main treaties of International Humanitarian Law – the 4 Geneva Conventions and its 3 Additional Protocols, although all its 27 Member States ratified the Geneva Conventions and its Additional Protocols I and II, and 25 of them the Additional Protocol III. Thus, it can be observed that the obligation to implement International Humanitarian Law, especially in relation to the Conventions and the Protocols, is primarily attributed to the Member States, however, the European Union can incur international responsibility in case it exercises effective control over the forces during the armed conflicts (BRESLIN, 2010).On the other hand, an International Committee of the Red Cross study identified 161 customary norms of International Humanitarian Law that, as sources of law recognized by the International Court of Justice – ICJ, bind the European Union.

In this regard, the Court of Justice of the European Union affirmed that the EU is subject to International Law (Poulsen Case)⁶, reiterating that its competence should be exercised according to International Law, respecting the rules of customary Law (RackeCase)⁷, declaring that the EU “[...] is bound to observe international law in its entirety, including customary international law, which is binding upon the institutions of the European Union” (Air Transport Association of America Case)⁸. Thus, it can be concluded that customary norms of IHL apply to the European Union and its military actions that involve armed conflicts.

Analyzing the internal legal order of the Union to evaluate to what extent it complements IHL, it is noted that the Lisbon Treaty and the Council acts constitute an important legal basis for the military operations, as well as its Human Rights *acquis*, serving as an integration factor between IHL and the internal legal order of the EU (FALCO, 2008).

The Treaty of Lisbon was established in Art. 42.1 that the European Union can employ the common security and defense policy in civil and military operational missions abroad in order to secure peacekeeping, conflicts prevention and to strengthen international security, according to the principles of the United Nations Charter, in conflict prevention activities and peacekeeping, tasks of combat forces in crisis management, peace-making and post-conflict stabilization.

Although the EU does not make any explicit reference to International Humanitarian Law or to the conduct of the military troops in its foundational treaties, it recognizes the principles of IHL in its internal legal order, inferring the duty to observe IHL from the obligation to respect human rights established in the foundational treaties, as well as established in the Council Regulation 975/1999, when it affirmed that “[...] human rights within the meaning of this Regulation should be considered to encompass respect for international humanitarian law [...]”⁹. It should still be considered that both the general principles of Community Law and the

⁴ EUROPEAN UNION. Council of the European Union. **Report on the implementation of pledges submitted by the EU and EUMS to the 32nd session of the International Conference of the Red Cross and Red Crescent**. 11210/19. Brussels, July 2019. Available at: <https://data.consilium.europa.eu/doc/document/ST-11210-2019-INIT/en/pdf>. Accessed: 20 Oct.. 2020. p.7.

⁵EUROPEAN UNION. Council of the European Union. Humanitarian Assistance and International Humanitarian Law. Brussels, Nov. 2019. 14487/19. Available at: <https://data.consilium.europa.eu/doc/document/ST-14487-2019-INIT/en/pdf>. Accessed: 14 Feb. 2022. p. 3.

⁶COURT OF JUSTICE OF THE EUROPEAN UNION. **Anklagemyndigheden v. Peter Poulsen and Diva Navigation Corp**. Preliminary Ruling. Case C-286/90. Luxembourg, 24 Nov. 1992. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=ecli%3AECJ%3AC%3A1992%3A453>. Accessed: 14 Feb. 2022.

⁷COURT OF JUSTICE OF THE EUROPEAN UNION. **A. Racke GmbH & Co. v. Hauptzollamt Mainz**. Preliminary Ruling. Case C-162/96. Luxembourg, 16 June. 1998. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61996CJ0162&from=EN>. Accessed: 14 Feb. 2022. para. 45.

⁸ COURT OF JUSTICE OF THE EUROPEAN UNION. **Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change**. Preliminary Ruling. Case C- 366/10. Luxembourg, 21 Dec. 2011. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62010CJ0366&from=EN>. Accessed: 14 Feb. 2022. para. 101.

⁹ EUROPEAN UNION. Council Regulation (CE) no. 975/1999, 29 Apr 1999. **Official Journal of the**

decisions of the European Court of Human Rights influence the integration of the principles of IHL in the internal legal order of the EU. Thus, the Union operations related to humanitarian aid should be guided by the principles of International Law and IHL, demonstrating their incorporation in the EU's internal legal order (FALCO, 2009).

In this regard, Art. 214.2 of the Treaty on the Functioning of the European Union provides that "Humanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality, and non-discrimination".¹⁰

Zwanenburg (2012) points out that even if the understanding that IHL is not framed in Human Rights is not accepted, it can be considered as part of the fundamental rights according to Art. 6.3 of the European Union Treaty. In this regard, Naert (2008) affirms that the mentioned article also refers to Humanitarian Law, since the widespread ratification of the treaties of IHL by the Member States and its consequent incorporation in domestic legislation make the obligations of Humanitarian Law part of the common constitutional traditions for the Member States. Moreover, the criminalization of war crimes in domestic legislation, the applicability of Human Rights, and, by extension, of Humanitarian Law in external relations of the European Union reinforces this understanding. Despite that, during the last years, the European Union has adopted the conduct of IHL independence in relation to Human Rights, getting involved in civil and military operations during the armed conflicts, training armed forces of other countries, establishing missions to ascertain violations of IHL (BRESLIN, 2010) and increasingly developing as a military (CARRON, 2016), peacekeeper and international security actor (FALCO, 2008).

On the other hand, since the establishment of the European Communities, there has not been any armed conflict between its Member States and third countries, there is no way to precise its application in such conflicts. However, the law of the EU should be considered in case it offers more individual protection, not being necessarily in contradiction with International Humanitarian Law, that is, the EU while a party to an armed conflict – international or non-international – will be subject to International Humanitarian Law norms through its customary norms and European law, and increasingly incorporating such law in its legal order.

III. THE APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW IN THE MILITARY OPERATIONS OF THE EUROPEAN UNION

The planning decisions and the decision-making process of the EU's Common Security and Defense Policy (CSDP) are taken by the Union's Council of Ministers that analyze the legal issues since the beginning of this process (NAERT, 2013), establishing the mission and the mandate. In military operations, the Council adopts a decision for the operation, together with an Operational Plan, and if it is the case, the Rules of Engagement (NAERT, 2011).

Since 2003, the Union has already launched 13 military operations,¹¹ using more than 10.000 military personnel of its Member States and third States (FALCO, 2009). The first EU military operation, the so-called Concordia, occurred in the Former Yugoslavia Republic of Macedonia¹², aiming to substitute the North Atlantic Treaty Organization (NATO), but involving recourse to its means and capacities and contributing to the stability and security in the country. However, NATO's support made the approach between the military aspects and the political and economic advantages aimed by the European Union in Macedonia difficult (KIRCHNER, 2013). In June of the same year, the Artemis operation began in the Democratic Republic of Congo (DRC) in accordance with Resolution 1484 of the United Nations Security Council,¹³ permitting the use of armed forces

European Communities, Brussels, May 1999. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999R0975&from=EN>. Accessed: 14 Feb. 2022. para.8.

¹⁰EUROPEAN UNION. Treaty on the Functioning of the European Union. **Official Journal of the European Union**, Brussels, Oct. 2012. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>. Accessed: 14 Feb. 2022. Art.214.2.

¹¹Military operations launched by the EU: Concordia, Artemis, European Union Force (EUFOR) Althea, EUFOR RD Congo, EUFOR Tchad/RCA, European Union Naval Force (EUNAVFOR) Atalanta, European Union Military Training Mission (EUTM) Somalia, EUTM Mali, EUFOR RCA, European Union Advisory Mission (EUAM) RCA, EUTM RCA, EU NAVFOR Med and EU NAVFOR MEDIRINI.

¹²EUROPEAN UNION. Council Joint Action 2003/92/CFSP of 27 Jan. 2003 on the European Union military operation in the Former Yugoslav Republic of Macedonia. **Official Journal of the European Union**, Brussels, 11 Feb. 2003. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003E0092&from=EN>. Accessed: 16 Jan. 2022.

¹³EUROPEAN UNION. Council Joint Action 2003/423/CFSP of 5 June 2003 on the European Union military operation in the Democratic Republic of Congo. **Official Journal of the European Union**, Brussels, 11 June 2003. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003E0423&from=EN>. Accessed: 16 June 2022.

beyond self-defense and aiming the stabilization in the regions of Ituri. The operation was the first one to be executed out of the European continent and without NATO's assistance, and although the limited European performance in all the region of Ituri, the European forces reached their goal in Bunia, demonstrating the ability of the EU in conducting its own local operations (Özveri, 2011). According to Crum and Palm (2019), the Artemis operation was invasive to centralizing the military operation but simultaneously involved political, diplomatic, and financial measures.¹⁴ In 2004, the Althea operation was launched for peacekeeping in Bosnia and Herzegovina,¹⁵ remaining the longest CSDP operation until the present day.¹⁶ The operation aims to support the measures adopted by the European Union in the country and despite the European speech trying to avoid dependence on the European forces,¹⁷ its foreign policy instruments reveal their preponderant European character (CRUM; PALM, 2019). Althea has been well-succeeded in relation to peacekeeping, conflict prevention, and training capacity of the armed forces in the country. However, in relation to the strategic political objectives, euro-Atlantic integration with the European Union and NATO has not been reached yet (MUHERINA; PEJIC; PULKO, 2016). Also in Congo, the European Union Force (EUFOR)¹⁸ occurred in 2006, and as the Concordia and Althea operations, it was conducted in a post-conflict context; however, there was no involvement of the EU's armed forces in the hostilities, since there was no armed conflict and situations that could trigger the application of IHL (FALCO, 2009), as long as the forces were sent to support the democratic character of the electoral process.

Subsequently, the EUFOR operation was launched in 2008¹⁹ situated in Chad and in the Central African Republic (CAR) in accordance with the Security Council Resolution 1778, allowing, therefore, the use of the armed forces beyond self-defense. The operation was executed in a context of a regional humanitarian crisis and ethnic violence in Sudan, presenting characteristics of international and non-international armed conflicts. Despite the fact that the EU's military troops had the consent of the authorities of Chad and the CAR, opposition groups from Chad tried to impede the participation of the European troops in the operations, questioning their impartiality. Undoubtedly, military operations executed in more hostile environments increase the probability of the multinational troops being a party to the combat and subject to IHL norms (FALCO, 2009).

Also in 2008 the Atalanta operation started, the first maritime operation in the European Union, in support of the Security Council Resolution 1816 to protect the coast of Somalia from piracy acts.²⁰ However, this operation reveals the interest of the European countries in protecting their maritime commerce, using CSDP more as an economic instrument for their own benefit rather than merely peace stabilization (GERMOND; SMITH, 2009). And in 2010 it was launched the European Union Military Training Mission (EUTM) Somalia,²¹ having as its

¹⁴ EUROPEAN UNION. Council of the European Union. **Framework For EU Action in Response to the Crisis in Bunia**. 9889/3/03 REV 3 EXT 1. Brussels, 04 June 2003. Available at: <https://s3.eu-central-1.amazonaws.com/euobs-media/a90a00da8543a980a4daed295abd5357.pdf>. Acesso em : 13 Jan. 2022.

¹⁵EUROPEAN UNION. Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina. **Official Journal of the European Union**, Brussels, 27 July 2004. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:252:0010:0014:EN:PDF>. Accessed: 16 Feb. 2022.

¹⁶ There are six current EU military operations: EUTM Mali (2013), EUTM Somalia (2010), EUTM RCA (2016), EUNAVFOR Atalanta (2008), EUFOR Althea (2004) and EUNAVFOR MED IRINI (2020).

¹⁷ EUROPEAN UNION. Council of the European Union. **Concept for the European Union (EU) Military Operation in Bosnia and Herzegovina (BiH) - Operation ALTHEA**. 12576/04. Brussels, 29 Sept. 2004. Available at: <https://data.consilium.europa.eu/doc/document/ST%2012576%202004%20INIT/EN/pdf>. Accessed: 13 Jan. 2022.

¹⁸EUROPEAN UNION. Council Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) during the election process. **Official Journal of the European Union**, Brussels, 29 Apr. 2006. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:116:0098:0101:EN:PDF>. Accessed: 16 Feb. 2022.

¹⁹EUROPEAN UNION. Council Decision 2008/101/CFSP of 28 January 2008 on the launching of the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR Tchad/RCA). **Official Journal of the European Union**, Brussels, 08 Feb. 2008. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008D0101&from=EN>. Accessed: 16 Feb. 2022.

²⁰EUROPEAN UNION. Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast. **Official Journal of the European Union**, Brussels, 12 Nov. 2008. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0851&from=EN>. Accessed: 16 Feb. 2022.

²¹EUROPEAN UNION. Council Decision 2010/96/CFSP of 15 February 2010 on a European Union military

goal to contribute to the security forces in accordance with the Security Council Resolution 1872. Similarly, the EUTM Mali also aimed to strengthen its armed forces and keep stability in the Sahel region.²² All these three military operations are still in force so far.

In 2014, having to regard to the continuous violations of IHL and Human Rights in the Central African Republic, such as attacks on civilians, kidnappings, torture, forced displacements, arbitrary detentions, and children recruitment, the Council of the EU established the military operation EUFOR RCA in accordance with the Security Council Resolution 2127.²³ In the following year, the Council of the EU approved a new mission aiming to reform the security sector, concentrating its actions in Bangui.²⁴ And, in 2016, the EU reinforced its role in the reform of the security forces in the region, establishing the mission EUTM RCA.²⁵

Regarding the European Union operations in the Mediterranean, the European Union Naval Force (EUNAVFOR)²⁶ was established in 2015, based on the EU's own interest (CRUM; PALM, 2019) and with the objective to capture the ships used for migrant trafficking. In March 2020, the Council of the EU launched the EUNAVFOR MED IRINI²⁷ operation in order to prevent arms trafficking, the illicit petroleum export from Libya and to contribute to building the coastal guard and navy in Libya.

However, International Humanitarian Law did not apply to the aforementioned military operations, since there was no armed conflict. Nonetheless, the EU and its Member States recognize their IHL obligations during the operations when they are involved in an armed conflict (NAERT, 2013).

In the absence of an armed conflict, the European Union should initially observe Human Rights in the conduct of its military operations. However, both IHL and Human Rights legal regimes should be simultaneously applied during the conflicts and an analysis of the operation should be made. In some cases, such as the operations EUFOR in Chad and in CAR, this analysis is more complex, with the risk of an EU military mission in an armed conflict area becoming a party to the conflict, so there should have more flexibility on the planning and on the operation rules (NAERT, 2013).

Although the European Union has not become a party to an armed conflict, its participation as a military and international security actor is growing, with an increasing need of establishing an Operation Plan which contains the applicable IHL norms, since possible violations by EU troops can undermine its credibility regarding the respect and the promotion of compliance with IHL in the international community (ZWANENGURG, 2012).

mission to contribute to the training of Somali security forces. **Official Journal of the European Union**, Brussels, 19 Feb. 2010. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:044:0016:0019:EN:PDF>. Accessed: 16 Feb. 2022.

²² EUROPEAN UNION. Council Decision 2013/34/CFSP of 17 January 2013 on a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali). **Official Journal of the European Union**, Brussels, 18 Jan. 2013. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0034&from=EN>. Accessed: 16 Feb. 2022.

²³ EUROPEAN UNION. Council Decision 2014/73/CFSP of 10 February 2014 on a European Union military operation in the Central African Republic (EUFOR RCA). **Official Journal of the European Union**, Brussels, 11 Feb. 2014. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0073&from=EN>. Accessed: 16 Feb. 2022.

²⁴ EUROPEAN UNION. Council Decision 2015/78 of 19 January 2015 on a European Union CSDP Military Advisory Mission in the Central African Republic (EUMAM RCA). **Official Journal of the European Union**, Brussels, 20 Jan. 2015. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D0078&from=EN>. Accessed: 16 Feb. 2022.

²⁵ EUROPEAN UNION. Council Decision 1016/610 of 19 April 2016 on a European Union CSDP Military Training Mission in the Central African Republic (EUTM RCA). **Official Journal of the European Union**, Brussels, 20 Apr. 2016. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0610&from=EN>. Accessed: 16 Feb. 2022.

²⁶ EUROPEAN UNION. Council Decision 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED). **Official Journal of the European Union**, Brussels, 18 May 2015. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D0778&from=EN>. Accessed: 16 Feb. 2022.

²⁷ EUROPEAN UNION. Council Decision 2020/472 (CFSP) 2020/472 of 31 March 2020 on a European Union military operation in the Mediterranean (EUNAVFOR MED IRINI). **Official Journal of the European Union**, Brussels, 01 Apr. 2020. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D0472&from=EN>. Accessed: 16 Feb. 2022.

IV. THE PROMOTION OF INTERNATIONAL HUMANITARIAN LAW BY THE EUROPEAN UNION

The European Union established IHL Guidelines²⁸ in order to promote its observance with third States. The measures contained in these Guidelines should also be followed by the EU and the Member States, although they are non-binding since they were not contemplated in the respective instrument. Since 2018, the Council's Working Party on Public International Law (COJUR) has prepared annual reports on these Guidelines implementation and the actions taken by the EU bodies in this area.²⁹

According to these Guidelines, the EU claims the States to adhere to the IHL instruments³⁰ and respect its norms. Also, the EU performs an important role in relation to the development of humanitarian instruments, as on the individual criminal responsibility for the violations of IHL (CARRON, 2016).

The EU's practice concerning the promotion of compliance with IHL is strictly related to humanitarian issues and aid provision in countries such as Yemen, Ethiopia, Afghanistan, Syria, Ukraine, and Libya. The European Union and the Member States fight against the proliferation of conflicts due to humanitarian crises through the promotion of IHL, owing to the interrelation between the massive law violations and the consequent claims for humanitarian assistance. The 2016 European Union Global Strategy reiterates the responsibility of the organization in preventing conflicts and aiding assistance.³¹ As a subject of International Law, the EU is bound by the responsibility to protect (R2P) (SCHMIDT, 2020), formulated by the United Nations General Assembly in the Final Document of the World Summit in 2005,³² especially in relation to the responsibility of assisting the States in the protection of the civilians. In this case, when military measures are necessary, there must be a consensus among the Member States about the interventions and the authorization of the Security Council. Regarding the humanitarian crisis in Libya in 2011, the military operation was not accomplished due to divergence among the Member States, although the authorization of the Security Council had been given.³³ However, at the request of the Libyan authorities, the EUBAM Libya was launched³⁴ in 2013, aiming for more security protection on the borders of the State. The link between humanitarian action, rule of Law promotion, and crisis management is in line with the Comprehensive Approach to European Union crisis operations (BRESLIN, 2010), which has as a goal more complementarity between the organization and the States in conflict situations.³⁵ On the other side, the narrow relationship between security and humanitarian action puts at

²⁸ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022.

²⁹ EUROPEAN UNION. Council of the European Union. Working Party on Public International Law (COJUR). **Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law**. Jan. 2020-Dec. 2020. Brussels, June 2021. Disponível em: <https://www.consilium.europa.eu/media/51415/ihl-report-en-2021.pdf>. Acesso em: 16 jan. 2022. p. 5.

³⁰ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art 16 a.

³¹ **Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy**. Brussels, June 2016. Available at: https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf. Accessed: 16 Jan. 2022.

³² UNITED NATIONS. General Assembly. **Resolution adopted by the General Assembly on 16 September 2005**. Sixtieth Session. A/RES/60/1. New York, 24 Oct. 2005. Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf. Accessed: 17 Jan. 2022. para. 138 e 139.

³³ UNITED NATIONS. **Security Council Resolution 1970 (2011)**. S/RES/1970 (2011). New York, 26 Feb. 2011. Disponível em: [https://www.undocs.org/S/RES/1970%20\(2011\)](https://www.undocs.org/S/RES/1970%20(2011)). Acesso em: 17 Jan. 2022; **Security Council Resolution 1973 (2011)**. S/RES/1973. New York, 17 Mar. 2011. Available at: [https://www.undocs.org/S/RES/1973%20\(2011\)](https://www.undocs.org/S/RES/1973%20(2011)). Accessed: 17 Jan. 2022.

³⁴ EUROPEAN UNION. Council of the European Union. Council Decision 2013/233/CFSP of 22 May 2013 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya). **Official Journal of the European Union**, Brussels, 24 May 2013. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0233&from=MT>. Accessed: 20 Feb. 2022.

³⁵ EUROPEAN UNION. European Commission. Joint Communication of the European Parliament and the Council. **The EU's comprehensive approach to external conflict and crises**. Brussels, 11 Dec. 2013. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013JC0030&from=en>. Accessed: 20 Feb. 2022.

risk the humanitarian assistance, as happened in the military operation EUFOR Libya, which was not implemented due to the absence of consent from the United Nations (DANY, 2015). Humanitarian aid should be linked with the IHL principles of impartiality, neutrality, and non-discrimination, and it should not be used as a foreign policy instrument for the benefit of the organization. Nonetheless, the European Union has already declared that “[...] Promoting principled humanitarian aid and respect for International Humanitarian Law remains at the core of our international engagement” (EUROPEAN UNION, 2019).³⁶ However, the speech is not consistent with its practice, and the humanitarian aid convergence in foreign policy affairs, disregarding the humanitarian principles puts millions of people at risk situation (DANY, 2015).

Concerning the means of action used by the European Union to promote compliance with IHL in relation to third countries, the Guidelines established that the EU can act through political dialogue, general public statements, demarches about specific conflicts, restrictive measures, cooperation with other international bodies, crisis management operations, individual responsibility, training, and export of arms.³⁷ The political dialogue is the most frequent means of action used by the EU,³⁸ both at peacetime and during armed conflicts, being an available measure for the Union and the Member States to influence third States in relation to the ratification of the main IHL instruments (BRESLIN, 2010), although the EU has not ratified them. However, the Union has used the political dialogue as an instrument of domination to propagate European “values” for its own economic benefit in third countries such as Nigeria, Bosnia and Herzegovina, Serbia, Kosovo, Afghanistan, and Ukraine, among others.

Besides the political dialogue, the general public statement emphasizes the need to act in accordance with International Humanitarian Law,³⁹ as the speech uttered by the European Union in 2009, highlighting the importance of the Geneva Conventions and the promotion of compliance with IHL.⁴⁰

The Union also conducts demarches about specific conflicts,⁴¹ condemning violations of IHL and adopting restrictive measures⁴² against the parties to the conflict, including arms embargo, restriction on admission of the EU, freezing of assets and economic sanctions in order to promote compliance with IHL.⁴³ The European Union, supporting an international arm embargo, has conducted demarches concerning the arms exporters to Myanmar in order to suspend the sales to the armed forces in the country, which have violated IHL

³⁶ EUROPEAN UNION. European Union External Action. Promoting principled humanitarian aid and respect for International Humanitarian Law. **Statement Federica Mogherini and Christos Stylianides**. Aug., 2019. Available at: https://eeas.europa.eu/delegations/ecuador/66524/promoting-principled-humanitarian-aid-and-respect-international-humanitarian-law_da. Accessed: 10 Nov. 2020.

³⁷ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art. 16 a-i.

³⁸ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art. 16a.

³⁹ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art. 16 b.

⁴⁰ EUROPEAN UNION. Council of the European Union. Declaration by the Presidency on behalf of the European Union on the Occasion of the 60th Anniversary of the adoption of the four Geneva Conventions of 1949. 12535/1/09 REV 1 (Presse 241). Brussels, 12 Aug. 2009. Disponível em: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/109638.pdf. Acesso em: 17 jan. 2022.

⁴¹ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Acesso em: 05 nov. 2020. Art. 16 c.

⁴² EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art. 16 d.

⁴³ EUROPEAN UNION. Council of the European Union. **Different types of sanctions**. Brussels, June 2019. Disponível em: <https://www.consilium.europa.eu/en/policies/sanctions/different-types/>. Acesso em: 10 nov. 2020.

norms.⁴⁴

According to the issue in question, promoting compliance with IHL by the European Union can be carried out together with other international organizations such as the United Nations, regional organizations such as NATO, Organization of American States, African Union, League of Arab States, and the International Committee of the Red Cross.⁴⁵

Moreover, the Guidelines establish that IHL can also be promoted through the mandate of the EU in crisis management operations in order to prevent and reprimand its violations.⁴⁶ The management activities in the EU have stimulated compliance with IHL in third States through the dialogue of the missions with the parties to the conflict, as on the operations of Aceh in Indonesia and on the Rafah border in Palestine (BRESLIN, 2010). Besides this, the Union encourages third States to adopt penal legislation related to violations of IHL.⁴⁷

The instruction in IHL is also considered an essential factor for its compliance. The European Union should encourage education and training to disseminate the norms in the States.⁴⁸ In this regard, it launched a military mission to contribute to the formation of the Somali armed forces in Uganda in 2010.⁴⁹

The Guidelines also refer to the export of arms⁵⁰ and reiterate the Council Common Position on the refusal of issuing export licenses of military equipment in order to be used in breach of the IHL norms, as occurred in Myanmar.⁵¹

According to Javier Solana, former EU High Representative for the Common Foreign and Security Policy, the Guidelines are an answer to the growth of operations and missions conducted by the organization.⁵² Nonetheless, by promoting compliance with IHL in third countries, the European Union does not demonstrate to be imposing its own values but merely influencing other countries to act in a similar way as the organization

⁴⁴ EUROPEAN UNION. Council of the European Union. Working Party on Public International Law (COJUR). **Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law**. Jan. 2020-Dec. 2020. Brussels, June 2021. Disponível em: <https://www.consilium.europa.eu/media/51415/ihl-report-en-2021.pdf>. Acesso em: 16 jan. 2022.

⁴⁵ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art. 16 e.

⁴⁶ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art. 16 f.

⁴⁷ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art. 16 g.

⁴⁸ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art. 16 h.

⁴⁹ EUROPEAN UNION. Council Decision 2010/197/CFSP of 31 March 2010 on the launch of a European Union military mission to contribute to the training of Somali security forces (EUTM Somalia). **Official Journal of the European Union**, Brussels, 7 Apr. 2010. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0197&from=EN>. Accessed: 20 Feb. 2022.

⁵⁰ EUROPEAN UNION. Council of the European Union. Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL). **Official Journal of the European Union**, Brussels, 15 Dec. 2009. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN). Accessed: 17 Feb. 2022. Art. 16 i.

⁵¹ EUROPEAN UNION. Council of the European Union. COUNCIL COMMON POSITION 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment. **Official Journal of the European Union**, Brussels, 8 Dec. 2008. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0944&from=EN>. Accessed: 20 Feb. 2022.

⁵² EUROPEAN UNION. Council of the European Union. **EU Guidelines: Human Rights and International Humanitarian Law**. Brussels, Mar. 2009. Available at: <https://www.consilium.europa.eu/media/30855/qc8308123enc.pdf>. Accessed: 15 Nov. 2020. Preface.

does. For the European Union, a good governance policy is an essential element for trade and socioeconomic development (LEINO, 2016)

V. CONCLUSION

Although the foundational treaties of the European Union do not explicitly refer to the IHL, it can be inferred its acknowledgment and observance by the principles outlined in the treaties such as impartiality, neutrality, and non-discrimination.

Since 2003, the EU has participated in military operations in third countries in order to promote peace and international security in situations derived from armed conflicts, although its armed forces still have not become a party to a conflict. Moreover, the European Union is not a party to the Geneva Conventions, its Additional Protocols and, the main instruments that regulate International Humanitarian Law. Nonetheless, the Union recognizes the applicability of IHL customary norms in case of involvement of its armed forces as parties to the armed conflicts.

Through the IHL Guidelines, the European Union aims to promote its norms in third countries; however, the organization uses this as a pretext and as an instrument of domination to reach its economic goals.

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