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The Crime of Mass Starvation:
Prosecution and Legal Strategies in International Law

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INTRODUCTION

Although the crime of Starvation is forbidden by International Treaties¹ and Customary International Humanitarian Rights Law (IHL),² it has never been prosecuted as a separate crime. Despite the presence of a legal framework condemning the use of Starvation as a method of warfare, international jurisprudence concerning this issue has yet to come. This is primarily because of its alleged intricacy and the difficulties in proving its essential elements. Moreover, most cases of Starvation occur in the context of armed conflicts, alongside the commission of other atrocities.

In light of these circumstances, prosecutors often prefer to concentrate on crimes whose legal boundaries have already been defined by case law (*i.e.*, the crime of genocide, murder, crimes against humanity), instead of prosecuting Starvation. To prove the commission of Starvation, the prosecutor must demonstrate beyond any reasonable doubt that the accused deprived *intentionally* civilians of *objects indispensable for their survival* (OIS).³ By doing so, beside the commission of the crime, the prosecution must focus on the perpetrator's mental element. In other words, the infliction of hunger against a civilian population, must be carried out with the specific intention of starving them.

Hunger may be used as a weapon for the achievement of various purposes. For example, it might be used for the purpose of killing, to obtain military advantages over the opposite party involved in the conflict, to seize control over a territory, to repress insurgencies or rebellions, or to force the displacement of a civilian population. Starvation is often caused by actions that are already prohibited under international law; collectively these actions are referred to as 'Starvation crimes'. According to International Criminal Law and International Humanitarian Law, the material element of Starvation may consist of attacking, destroying, rendering useless objects indispensable for the survival of civilians, or the intentional denial of humanitarian relief operations. In particular, hindering and blocking humanitarian efforts in the context of armed conflicts is becoming a common practice. For instance, evidence of such activities was frequently detected during the conflicts in Syria, Yemen and South Sudan, causing catastrophic effects on food security. In the latter case of South Sudan,

¹ Art.8 (2)(b)(xxv), the Statute of the International Court (ICC), 'The Rome Statute' (1998).

² Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (1977).

³ For instance, foodstuffs, agricultural areas, livestock, water supplies.

according to several reports and analyses,⁴ approximately six million South Sudanese are facing acute food insecurity and need urgent humanitarian assistance, due to the practices perpetrated during the civil war.⁵

The principal tool for the identification of famine and Starvation is the Integrated Food Security Phase Classification Scale (IPC), which provides analysis on the population's nutritional conditions, based on data concerning the status of food security and of mortality rates. However, although the IPC may represent a crucial tool for the prevention and determination of food crisis, it does not grant a subsequent resolution of the issue. The decisions taken as a consequence of the analysis imply a separate and different process. In other words, to seek solutions for food crises, it is indispensable that States and the international community, coordinate their decision-making procedures with the activity of the IPC, otherwise the information published by the IPC would be useless.

⁴ For example, '*Detailed Findings of the Commission on Human Rights in South Sudan*', HRC (A/HRC/46/CRP.2, 18 February 2021); '*Report of the Commission on Human Rights in South Sudan*', (UN Doc. A/HRC/43/56, 31 January 2020); '*The State of Human Rights in the Protracted Conflict in South Sudan*' (OHCHR, 4 December 2015); South Sudan – IPC Country Analysis (IPC Global Platforms).

'Indiscriminate Attacks against Civilians in Southern Unity, April-May 2018, South Sudan' (OHCHR, UNMISS, HRD, July 2018).

⁵ South Sudan – IPC Country Analysis (IPC Global Platforms).

CHAPTER 1: THE CRIME OF STARVATION AND ITS USES

1.1 What is Mass Starvation?

At this moment, an explicit definition of ‘Starvation’ under International Criminal Law has yet to come. It is somehow surprising to figure out that the Statutes of ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda,⁶ the Statute of the Extraordinary African Chambers⁷ and the law founding the Extraordinary Chambers in the Courts of Cambodia do not contemplate any provision which unequivocally criminalizes Starvation. Nonetheless, the Statute of the International Criminal Court (The Rome Statute of 1988) has been the first treaty to expressly mention Starvation,⁸ but only as an international crime in international armed conflicts. Furthermore, judicial pronouncements from these international criminal courts regarding this subject are exiguous.

According to the English language the term ‘Starvation’ is understood as the circumstance of ‘suffering or death caused by lack of food’.⁹ On the other hand, the verbal sense of ‘to starve’ indicates the act of subjecting someone to famine or to scarcity of food or water.

Notwithstanding few references to the prohibition of Starvation,¹⁰ only after World War II, Starvation has been qualified as a forbidden method of warfare under International Humanitarian Law and International Criminal Law.¹¹ This acknowledgement has been enforced with the introduction of the Rome Statute. Despite the recognition, the international crime of Starvation has been marginalized from prosecutorial practice, enabling other atrocity crimes to prevail in prosecution. This reflects why no one has been yet convicted or directly prosecuted for the crime of Mass Starvation.¹²

⁶ Updated Statute of the International Criminal Tribunal for the Former Yugoslavia (adopted in 25 May 1993), Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (adopted on 8 November 1994).

⁷ Statute of the Extraordinary African Chambers (2012).

⁸ Article 8 (2)(b)(xxv), The Rome Statute (1998).

⁹ Starvation’ (*OED Online*, OUP December 2018) available at: www.oed.com/view/Entry/189208

¹⁰ Hague Regulations ‘Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, American Journal of International Law (1920).

¹¹ K. Dorman, L. Oswald-Beck, R. Kolb *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (Cambridge University Press, 2003); C. Byron, ‘War Crimes and Crimes Against Humanity in the Rome Statute of the International Criminal Court: A Commentary’ (Munich/Oxford/Baden-Baden, 2016).

¹² A. de Waal, ‘Mass Starvation: The History and Future of Famine’ (Cambridge: Polity, 2017).

From a broad perspective, the concept of Starvation may be identified as both as an outcome and a process. As an outcome, the focus mainly refers to the deprivation of food until death. In this sense, it is correct to point out that deaths directly caused by Starvation are considerably uncommon even during famines. Usually, the direct cause of death in these circumstances is infectious disease.

On the other hand, the interpretation of Starvation as a process is connected to various acts of deprivation that materialize when perpetrators obstruct targeted groups of people to have access to objects indispensable for their survival (OIS).¹³

Several actions may be qualified as acts of Starvation. In first instance, the deprivation of the capacity to obtain food, extends not just to the denial or destruction of certain facilities (for example, food stores), but also to the impediment of certain activities (such as harvesting, breeding, and trading).¹⁴ Other relevant forms of deprivation are the acts aiming at the downgrading of public health (avoiding access to clean water, obliging people to live in unhealth conditions), lowering habitations and shelters and reducing the ability for mothers to provide essential care for their children.¹⁵

1.1.2 The acts qualified as Starvation Crimes under International Criminal Law and Humanitarian Law

The crime of Starvation is forbidden as a method of warfare under International Humanitarian Law in the Additional Protocol (AP) of 1977 to the four Geneva Conventions. Article 54(1) of Additional Protocol I and Article 14 of Additional Protocol II declare Starvation unlawful in both International armed conflicts and non-international ones.¹⁶ According to the Additional Protocols I and II, since Starvation is banned as a method of warfare, it is therefore prohibited to attack, destroy, or inhibit the access to Objects Indispensable for survival. Article 54 (2) of the Additional Protocol I to the Geneva Conventions provides a series of OIS which cannot be attacked, destroyed, removed, or rendered useless¹⁷, such as ‘foodstuffs, agricultural areas to produce foodstuffs, crops, drinking water installations and supplies and irrigation works’.¹⁸

¹³ R. Howard-Hassmann, ‘State Food Crimes’ (Cambridge University Press, 2016).

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, Article 14: ‘Protection of objects indispensable to the survival of the civilian population’.

¹⁵ Commentary on Article 14 of the Additional Protocol II, International Committee of the Red Cross (ICRC).

¹⁶ Additional Protocol I to the Geneva Conventions of 12 August 1949.

¹⁷ Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge University Press, 2016), pages 251-252.

¹⁸ Commentary to Rule 54, ICR Customary IHL Database, 2005; J. Crowe and K. Weston-Scheuber, ‘Principles of International Humanitarian Law (Cheltenham/Northampton, 2013).

While Additional Protocol I to the Geneva conventions solely applies to circumstances in armed conflicts, there is no reason that these kinds of objects could be less indispensable during peace.

To categorize Starvation, harmful acts directed against OIS must be carried out with '*the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or any other motive*'.¹⁹ Limits and exceptions to this prohibition are provided by Art 54 (3) of Additional Protocol I when the sustenance is utilized by the counterparty:

- a) as a sustenance solely for the members of its armed forces,
- b) in direct support of military action, however, in no case actions against OIS shall be taken when they might leave the civilian population with inadequate food or water.²⁰

Similar forbiddance on the utilization of Starvation is provided by Rules 54, 55 and 56 of customary International Humanitarian Law²¹. These provisions include: the prohibition of attacking OIS of the civilians (Rule 54), deliberately denying access of humanitarian aid for civilians in need (Rule 55) and the restriction of movement for humanitarian relief personnel (Rule 56).²² The approach granted by International Humanitarian Law was accepted by the International Community and the provided prohibition was recognized to as customary law.²³ As result, this led to the recognition that the violation of these principles constituted not just a serious offence to the protection of civilians in armed conflicts, but also an international crime²⁴. Regardless the development of the legal framework, several doubts remained concerning the concrete protection that these laws offer to civilians.

The framework appointed by the International Criminal Law is composed of two elements:

- I) The Statute of the International Criminal Court, which includes several forbidden acts, such as the crime of genocide, crimes against humanity, war crime and the crime of aggression.

¹⁹ Article 54(2) API and Article 14 APII, IHL Database, Customary IHL, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule54

²⁰ Commentary of 8 June 1977 on Article 54 of the Additional Protocol to the Geneva Conventions of 12 August 1949 (ICRC Customary Database 2005); S. Hutter, 'Starvation as a Weapon: Domestic Policies of Deliberate Starvation as a Means to an End under International Law' (Leiden/Boston, Brill Nijhoff, 2015).

²¹ Rule 53 API, ICRC (Customary IHL Database, 2005).

²² Rule 54, Rule 55, Rule 56 API, IRRC Customary Database, 2005.

²³ A. Gillespie, 'A History of the Laws of War: Volume 2 – The Customs and Laws of War with Regards to Civilians in Times of Conflict' (Oxford/Portland, Hart Publishing, 2011).

²⁴ J. Pejic, 'The Right to Food in Situations of Armed Conflict: The Legal Framework', International Review of the Red Cross (2001).

II) The Elements of International Crimes which focus on the conduct, consequence and circumstances related to each crime.²⁵

There is a notorious Latin Brocard in this regard, '*actus non facit reum nisi mens sit rea*' which attests that a guilty act together with a guilty intention constitutes a crime. Moreover, from this maxim arises the principle by which no one must be punished in a criminal proceeding unless it is proven that, with the commission of the crime, there has been also a criminal intention. Such elements must be proven beyond any reasonable doubt.²⁶

To understand this issue, it is useful to underline that all international crimes have three interconnected elements. The first one is the 'material element' ('actus reus'), which generally relates to a conduct, thus an act or omission, which determines a harmful event. Therefore, to punish a crime, the prosecution must mainly focus on how the crime occurred, where it happened and who was involved. Even though there is no explicit definition of what is meant by 'material', Article 30 (2) and (3) of the Rome Statute, associates to this concept three different types of non-mental elements (conduct, consequence, and circumstance).²⁷

The second element is the 'mental' one ('mens rea'), which mostly relate to the awareness of the actor that his/her conduct constitutes a crime.²⁸ The last element is qualified as 'contextual element', which regards the legal identification of which category of conflicts suits better for the crimes that have been committed. Especially in this last case, evidence and information are crucial to help to form judicial decisions.²⁹

Hence, to be prosecuted, a crime must always present one or more objective elements and at the same time, one or more mental and contextual elements.

²⁵ O. Triffterer, K. Ambos, 'The Rome Statute of the International Criminal Court: A commentary' (Munich: C.H. Beck, 2016); S. Lee, 'The International Criminal Court: The Making of the Rome Statute: Issues, Negotiations, Results' (Amsterdam: Kluwer Law International, 1999).

²⁶ K. Dörmann, 'Elements of War Crimes under the Rome Statute of the International Criminal Court' (Cambridge, Cambridge University Press, 2004); J. De Hemptinne, R. Rotj, E. van Sliedregt, 'An Introduction to International Criminal Law and Procedure' (Cambridge: Cambridge University Press, 2019).

²⁷ K. Dorman, 'War Crimes under the Rome Statute of the International Criminal Court, with a Special Focus on the Negotiations on the Elements of Crime', 2003, available at: https://www.mpil.de/files/pdf3/mpunyb_doermann_7.pdf, Cryer, Robinson, Vasiliev, 'An Introduction to International Criminal Law and Procedure' (Cambridge: Cambridge University Press, 2019); ²⁷ B. Conley, A. De Waal, C. Murdoch, W. Jordash Q.C, 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford, Oxford Monographs in International Humanitarian Law and Criminal Law, 2022).

²⁸ O. Triffterer, K. Ambos; K. Dörmann; See SUPRA note 25.

²⁹ M. J. Ventura, 'Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities (Journal of International Criminal Justice, 2019); B. Conley, A. De Waal, SUPRA note 19.

More specifically, in relation to the mental element, according to the ICC's Statute, a person shall be considered criminally liable for punishment for a crime committed with 'intent' and 'knowledge'.³⁰

In particular, the intent is determined:

- i) Concerning the conduct, when the actor means to engage the conduct,
- ii) Concerning an outcome, when the person deliberately means to provoke that outcome.

From a legal perspective, 'knowledge' ('cognitive element') refers to the awareness that a specific circumstance or a consequence will happen in the natural course of the events.³¹

Regarding the material and mental elements for Starvation, it is fundamental to analyze the legal framework arranged by Article 8 (2) of the Rome Statute. The norm criminalizes '*intentionally using Starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions*'.³²

In this case, there are four different elements requested to prove the offence:

- a) The civilians were deprived of the Objects indispensable for their survival by the perpetrator,
- b) The intention of the perpetrator to starve the civilians as a method of warfare,³³
- c) The harmful conduct occurred in the context of an international armed conflict,
- d) The perpetrator was conscious about factual circumstances that ascertain the existence of an armed conflict.³⁴

³⁰ Article 30, The Rome Statute of the International Criminal Court, available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>; See ICC, Prosecutor v Katanga, Trial Judgement (ICC-01/04-01/07-3436, 7 March 2014) para. 774, which states: '*As regards the consequence of the act committed, the Statute foresees two forms of intent. The first appears in article 30(2)(b), which lays down that a person has intent where that person means to cause a consequence (dolus directus of the first degree). That definition refers to the conventional definition of intent: volition to commit the act and to achieve the desired result. The second form of intent provided for by the Statute in relation to the consequence of the act committed is awareness that the consequence "will occur in the ordinary course of events", a concept which the Statute leaves undefined and which it rests with the Chamber to determine*'; para. 776, which establishes: 'and para. 776, which establishes: *The words "will occur", read together with the phrase "in the ordinary course of events", make clear that the required standard of occurrence of the consequence in question is near but not absolute certainty. The standard is therefore "virtual certainty", otherwise known as "oblique intention"*'.

³¹ William Schabas, *The International Criminal Court- A Commentary on the Rome Statute* (2nd edn, OUP 2016).

³² Article 8, The Rome Statute of the International Criminal Court, available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

³³ See ICC, Prosecutor v Katanga, Trial Judgement (ICC-01/04-01/07-3436), SUPRA note 57.

³⁴ O. Triffterer, K. Ambos, 'The Rome Statute of the International Criminal Court: A Commentary (Munich: C.H. Beck, 2016); W. Jordash, C. Murdoch and J. Holmes, 'Strategies for Prosecuting Mass Starvation'(Journal of International Criminal Justice).

1.1.3 The material/objective element

The definition given by Article 8 of the Rome Statute is wide enough to include in the legal scheme of the actus reus, any act or omission that determines for civilians, a deprivation of objects indispensable for their survival. According to the ICC's Statute, , the definition of Starvation refers only to the conduct of depriving civilians of certain types of objects, it does not require, as a legal precondition, death as a result from Starvation.³⁵ Thus, what is being criminalized in this sense is not the death of people – though death might be judged as an aggravating circumstance for punishing Starvation – but the deliberate intention to expose civilians in a circumstance that can guide them to death.³⁶ In other words, if death was to be considered an element of the offence, it would lead to irrational circumstances, for example an accused individual could starve civilians but would not be liable for Starvation because death has not occurred.

The actions that incorporate the so-called actus reus in the context of Starvation may be distinguished in direct deprivation (*i.e.*, destroying food and water supplies or preventing their delivery) and indirect deprivation (interfere with the production of food and water supplies).³⁷

One way in which the actus reus may be achieved is through 'willfully impeding relief supplies'.³⁸ Unfortunately, the absence of any reference to this concept in the Elements of Crime seems to confirm that it constitutes an optional condition for fulfilling the objective element of the offence. Usually, any conduct that consists of restricting civilians' use of an object is qualified as an act of deprivation. Time is a crucial component in the infliction of Mass Starvation. As most cases of Starvation involve civilians and take place over an extended period of time, it is difficult to prosecute the offenders in a reasonable period of time.³⁹ Debatable is the requirement for a minimal amount of time to demonstrate the element of Starvation. For instance, the duration issue is significant in situations where there is a temporary loss of water or electricity, which frequently happens in connection with armed conflicts. There seems to be no justification to read into the provision of Article 8 some sort of minimum length requirement for the deprivation as the elements do not refer to a minimum

³⁵ M.J. Ventura, 'Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities (Journal of International Criminal Justice, 2019); B. Conley, A. De Waal, C. Murdoch, W. Jordash Q.C, 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford, Oxford Monographs in International Humanitarian Law and Criminal Law, 2022).

³⁶ K. Dörmann, 'Elements of War Crimes under the Rome Statute of the International Criminal Court' (Cambridge, Cambridge University Press, 2004), page 364.

³⁷ D. Akande, E-C. Gillard, 'Conflict Induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare' (17 Journal of International Criminal Justice, 2019).

³⁸ Article 8 (2)(b)(xxv), The Rome Statute of the International Criminal Court, available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

³⁹ UNHR, 'Starvation being used as a method of warfare in South Sudan' – UN Panel (UN, 06 October 2020).

duration in a specific temporal sense and since it is not necessary that civilians actually starve to death.⁴⁰

The crucial aspect of this Element of Crime is that the victims of the offence must be civilians. Civilians are the people who are not actively involved in the armed conflicts⁴¹. In case of doubt whether a person is a civilian, that person shall always be recognized as one of them. There are some exceptions to this, for instance, the International Humanitarian Law does not prohibit the deprivation of OIS to enemies, unless they are wounded, sick, captured/detained, or unable to actively be part of the conflict.⁴² If the object in question is exclusively used by the combatants (*i.e.*, food supplies in an enemy military camp), deprivation would not be punished⁴³. Correspondingly, objects that are being used directly as a support to military action, if even used by civilians, may be lawfully assaulted (*i.e.*, military vehicles). Ultimately, during armed conflicts, Parties may deprive civilians on their own territory of Objects indispensable for their survival, if it is demanded by military necessity (*i.e.*, for defense against invasion)⁴⁴.

During the last two decades, there has been a fierce debate between jurists whether the concept of Objects indispensable for survival might include other objects, beside food and water.⁴⁵ It is clear that humans cannot survive only of food and water. However, at this moment the provision which criminalizes Starvation does not associate to the offence a lack of shelter, of medical supplies, of clothing, etc. For this reason, when a civilian lacks these items, he/she is not assumed to be starving.⁴⁶ The essence of the term ‘Starvation’ would be expansive if it were to include these items within the objective element of Starvation. After all, the definition provided by the Rome Statute is broad enough to prosecute various factual circumstances regarding food and water.⁴⁷

⁴⁰ F. D’Alessandra, M. Gillett, ‘The war crime of Starvation in non-international armed conflict’ (BSG Working Paper Series, University of Oxford), page 18-20.

⁴¹ See Art.50 API, Art. 13-15, Art.17-18 APII, the Additional Protocols do not contain an explicit definition of ‘Civilians’, even though this term is used in several provisions.

⁴² Article 54(3), API, available at: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf.

⁴³ Article 54(3), API, ICRC Commentary to the Additional Protocols.

⁴⁴ Article 54 (5), API.

⁴⁵ Y. Dinstein, ‘The Conduct of Hostilities under the Law of International Armed Conflicts’ (Cambridge University Press, 2016).

⁴⁶ C. Byron, ‘War Crimes and Crimes against Humanity in the Rome Statute of the International Criminal Court: A Commentary (Publishing/Nomos, Munich/Oxford/Baden-Baden, 2016).

⁴⁷ M.J. Ventura, See SUPRA note 35.

1.1.4 The mental/subjective element

To accomplish the subjective element (*'mens rea'*) for the crime of Starvation, Article 8 of the Rome Statute requires two specific conditions: the perpetrator must *intentionally* deprive civilians of the Objects indispensable for their survival and must *intendedly* starve civilians as a method of warfare.⁴⁸

Concerning the first condition, the reference to the term 'intentionally' clears that the offences must not be perpetrated by mere negligence or by accident. As result, the perpetrator shall be aware of the outcome of his actions (Starvation) and shall act with the specific desire to achieve a certain event (*dolus directus* in the first degree). This condition doesn't necessarily require Starvation as the only desired result. It might happen that the perpetrator has more than one objective (*i.e.*, the perpetrator intends, at the same time, to starve the civilian population and to prevent the transportation of weapons, hidden in food supplies, to another town). In such cases, to execute the crime, at least one of the intentions must correspond to the intent of starving civilians.⁴⁹

The concept of intentional deprivation follows the application of the legal framework provided by Article 30, which states that '*unless otherwise provided a person shall be criminally responsible and liable for punishment for a crime only if the material elements are committed with intent and knowledge*'.⁵⁰

As previously mentioned,⁵¹ the condition that the *actus reus* must be committed with '*intent and knowledge*' denotes, that the perpetrator '*means to cause that consequence*' (direct intent)⁵² or is aware that such event will occur in the '*ordinary course of the events*'.⁵³

In compliance with the application of the Statute, the deprivation of OIS shall occur as both a conduct and a consequence. It is essential, for the qualification of the crime of Starvation, that the perpetrator is aware that the objects of which he or she is depriving the civilians are indispensable for their survival.⁵⁴ Thus, knowledge is defined in relation to circumstances (the accused must be aware that

⁴⁸ Article 8, The Rome Statute of the International Criminal Court (1998), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

⁴⁹ M.J. Ventura, 'Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities (Journal of International Criminal Justice, 2019)

⁵⁰ Article 30 (1), The Rome Statute of the International Criminal Court (1998)

⁵¹ See par. 1.1.1 for the general clarification of 'intent and knowledge.'

⁵² Article 30 (2)(a), The Rome Statute of the International Criminal Court (1998)

⁵³ Article 30 (2)(b), The Rome Statute of the International Criminal Court (1988), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

⁵⁴ See IRCR Commentary to the Additional Protocols, SUPRA note 20.

a circumstance exists)⁵⁵ or in relation to the outcome of the perpetrator's conduct (Starvation will occur in the ordinary course of the events).

Moreover, the case law of the International Criminal Court has interpreted 'intent' to include, alternatively, direct intent ('*dolus directus* in the first degree')⁵⁶ or *dolus directus* in the second degree, by which the perpetrator did not mean to determine the consequence (did not intend Starvation) but was aware that his conduct could have caused it (so-called '*oblique intent*').⁵⁷ Although the crime of Starvation requires the deprivation of OIS as both a conduct and a consequence, it seems to not require the proof that civilians did in fact starve. During the drafting of the Statute, the drafters considered various proposals concerning the possibility of including the expression 'as a result of the accused acts, one or more persons died of Starvation' within the definition of the crime. Nonetheless, these proposals were not adopted.⁵⁸

Anyhow, it is now generally accepted, under International Humanitarian Law, the prohibition of Starvation as a method of warfare, independently whether its effects are visible towards the civilians.⁵⁹ There are different opinions regarding the interpretation of '*methods of warfare*'. In accordance with the International Humanitarian Law, 'method of warfare' refers to the method in which weapons are used.⁶⁰ However, the definition given by the IHL appears to be too restrictive, since there are various methods of warfare which do not implicate the use of weapons, such as Starvation, improper use of emblems or denial of quarter.⁶¹ In fact, these strategies of conducting

⁵⁵ Article 30 (3), The Rome Statute of the International Criminal Court (1998).

⁵⁶ For instance, in the judgement of Akayesu, the International Criminal Tribunal for Rwanda used the term 'specific intent' (more accurately referred as 'direct intent') to describe the genocidal intent as '*the specific intention to, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged*' (ICTR-96-4-T, Akayesu Trial Judgement).

⁵⁷ ICC, 'Prosecutor v Katanga' (Trial Judgement, ICC-01/04-01/07-3436-tENG, 7 March 2014), para. 774 and 776, see SUPRA note 25; ICC, 'Prosecutor v Bemba' (Trial Judgement, ICC-01/05-01/13-1989-Red, 19 October 2016) para 29, which states: '*Following the terms intent and knowledge as referred to in Article 30 (2) and (3) of the Statute, the Chamber understands the notion intentionally within the meaning of Article 70 (1)(a) of the State to embrace the direct intent and the oblique intent...*'; ICC, 'Prosecutor v Ntaganda' (Trial Judgement, ICC-01/04-02/06-2359, 8 July 2019), para 1170, which states: '*The underlying acts of each crime against humanity must be committed 'with knowledge of the attack'.3189 However, it need not be proven that the perpetrator had knowledge of all of the characteristics of the attack or was aware of the precise details of the plan or policy of the State or organisation.3190 This requirement will be satisfied if it is shown that the perpetrator was aware of the circumstances that established the widespread or systematic attack against a civilian population, for example, by being aware of repeated or coordinated violence against a certain civilian population that was not spontaneous or unintended. He or she then only needs to have intended to further such an attack*'.

⁵⁸ B. Conley, A. De Waal, C. Murdoch, W. Jordash Q.C, 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford, Oxford Monographs in International Humanitarian Law and Criminal Law, 2022), pages 113-115.

⁵⁹ B. Conley, A. De Waal, C. Murdoch, W. JORDASH QC, 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, 2022).

⁶⁰ Commentary on the Humanitarian Policy and Conflict Research manual on International Law Applicable to Air and Missile Warfare (Cambridge: Harvard University, 2010).

⁶¹ N. Melzer, C. Gaggioli, 'Methods of Warfare', Oxford Guide to the International Humanitarian Law (Oxford: Oxford University Press, 2019). See also P.J. Cameron, 'The Limitations on Methods and Means of Warfare' (Australian Yearbook of International Law, 1980).

hostilities are described as methods of warfare and are included in Part III, Section I of the Additional Protocol I regarding the '*Methods and Means of Warfare*'.⁶² For this reason, several experts⁶³ prefer to endorse the perspective by which such term may be defined as:

- (i) The way in which weapons are used,
- (ii) Any specific, tactical, or strategic way of conducting hostilities, without the use of weapons, that aim at weakening the enemies.⁶⁴

The latter definition underlines that the methods of warfare must not be limited only to the utilization of weapons. With this approach, it is possible to include to the concept of method of warfare several subcategories of military operations, such as: aerial and naval blockades, sieges, or the institution of a no-fly zone.⁶⁵ Therefore, relating to the crime of Starvation intended as a method of warfare, there must be the intent to use Starvation as a '*specific, tactical or strategic, way of conducting the hostilities*'.⁶⁶

1.2 Aftermath of Mass Starvation: Economic and Social Effects

Malnutrition and famine are a concern for public action since it leads to lethal depressions and affects entire populations. International and national policies and private activism can prevent or at least lessen the consequences of famine. During the last decades, several professionals focused on the creation of a standardized diagnostic system that could detect and calibrate relief responses to food crisis.⁶⁷ This brought to the development of the so-called 'IPC', to be utilized by FAO'S Food Security and by the Nutrition Analysis Unit in Somalia's for the food emergency of 2004⁶⁸.

The Integrated Food Security Phase Classification (IPC) is a set of guidelines for categorizing the magnitude and the causes of food insecurity⁶⁹. In particular, it constitutes the outcome of a

⁶² N. Melzer, C. Gaggioli, Commentary to the AP's .

⁶³ C. Gaggioli, N. Melzer, B. Conley, A. De Waal, C. Murdoch.

⁶⁴ N. Melzer, C. Gaggioli, 'Methods of Warfare', Oxford Guide to the International Humanitarian Law (Oxford: Oxford University Press, 2019).

⁶⁵ E. Rosenbald, 'Starvation as a Method of Warfare, Conditions for Regulation by Convention' (7 International Lawyer, 1973).

⁶⁶ N. Melzer, C. Gaggioli, 'Methods of Warfare', Oxford Guide to the International Humanitarian Law (Oxford: Oxford University Press, 2019). See also P.J. Cameron, 'The Limitations on Methods and Means of Warfare' (Australian Yearbook of International Law, 1980).

⁶⁷ H. Young, S. Jaspars, 'The Meaning of Acute Malnutrition in Emergencies: A Primer for Decisions-Makers' (Humanitarian Practice Network Paper, 2006)

⁶⁸ 'IPC Overview and Classification System', available at: <https://www.ipcinfo.org/ipcinfo-website/ipc-overview-and-classification-system/en/>.

⁶⁹ H. Young, S. Jaspars, 'Review of Nutrition and Mortality Indicators for the Integrated Food Security Phase Classification (IPC): Reference Levels and Decision-Making' (SCN Task Force on Assessment, Monitoring and Evaluation, and the Integrated Food Security Phase Classification Global Partners, 2009).

collaboration between several regional and international organizations for the purpose of improving the decision-making by guaranteeing the most accurate analysis related to food security.⁷⁰ By providing evidence and fact-based information, it is useful for UN, NGOs, and national governments to detect the areas suffering food insecurity and to build technical consensus for a better collaboration.⁷¹ In order to ensure the best assessment of the situation based on the information available, there are three kinds of IPC scales: Acute Food Insecurity (AFI), Acute Malnutrition (AMN) and Chronic Food insecurity (CFI). Each scale categorizes a certain condition that is related to a specific set of responses.⁷²

The concept of Acute Food Insecurity concerns a circumstance where food insecurity is present at a certain time and is severe enough to endanger lives or livelihoods, regardless of its causes, the background or its duration. To frame the critical issues of the situation, the IPC scales provide five severity categories, implying different approaches depending on the case's seriousness. Concerning Acute food insecurity, the phases are classified into: 'Minimal', 'Stressed', 'Crisis', 'Emergency' and 'Famine'. The qualification of 'minimal' food insecurity is arranged when households are able to obtain food and basic needs without engaging particular strategies to have access to food. When a situation is labeled as 'stressed', households manage to have access to food but are unable to afford non-food goods without using stress-relieving techniques.

Phase 3 ('crisis') occurs when households have a high average level of acute malnutrition, or when they are able to have access to food only by exhausting their primary sources of income.⁷³

The situation turns into 'emergency' when there are significant food consumption gaps proven by high mortality rates; or when the consumption gaps can be mitigated only by livelihood emergency strategies and asset liquidation.⁷⁴ The last Phase, 'famine' or 'catastrophe', concerns the scenario of extreme lack of food and basic needs, where critical malnutrition is evident, and rates of mortality are excessively high. The IPC to define famine, relates to the definition given by the 'Actions contre le

⁷⁰ 'Integrated Food Security Phase Classification, 'Technical Manual Version 2.0.: Evidence and Standards for Better Food Security Decisions' (2012), available at: https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/manual/IPC_Technical_Manual_3_Final.pdf

⁷¹ See SUPRA note 63.

⁷² See SUPRA note 63.

⁷³ For instance, the recently the IPC drafted a projection for February 2023 and March -June 2023 concerning the Food Crisis in Kenya (available at: <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1156210/?iso3=KEN>). According to the projection several counties (i.e., Isiolo, Marsabit and Mandera) are facing acute food insecurity, referable as Crisis (Phase 3). Similar situations were detected in a study involving Timor Leste (available at: <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1156204/?iso3=TLS>), where climate conditions deteriorated the food security, exposing more than 22% of the total population to food crisis (IPC Phase 3 or above).

⁷⁴ 'Understanding the IPC Scales', page 4, available at: https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/communication_tools/brochures/IPC_Brochure_Understanding_the_IPC_Scales.pdf.

faim' (ACF),⁷⁵ which implies: '*the absolute inaccessibility of food to an entire population or subgroup of a population, potentially causing death in the short term*'.

Depending on the phase, responses to food instability may be urgent. To face these situations, international and regional organizations adopt short-term objectives either to prevent (*i.e.*, in the cases dealing with Phase 1, by reducing the risk with the reinforcement of livelihoods) or undertake direct remedies (*i.e.*, reducing the food consumption gaps by implementing safety programs).

The Chronic Food Insecurity relates to long-term food insecurity that is primarily caused by structural factors (*i.e.*, intra-annual seasonal food insecurity).⁷⁶ Unlike the other two IPC scales, the Chronic Food Insecurity one classifies food insecurity using four 'levels', which are: 'Minimal Chronic Food Insecurity', 'Mild Chronic Food Insecurity', 'Moderate Chronic Food Insecurity', 'Severe Chronic Food Insecurity'.⁷⁷

In this instance, unlike the AFI, the competent authorities and organizations often adopt short- and long-term goals to assist the victims by preventing or mitigating the effects of chronic malnutrition. As in the previous classification, the responses vary depending on the magnitude of the emergency, they might simply consist of activities dealing with the investment in 'disaster risk reduction' or with the enforcement of safety programs to improve the availability of food in terms of quantity and quality. The last IPC scale is known as Acute Malnutrition, this scale focuses on locating regions where a significant number of minors are severely undernourished and where immediate response is required.⁷⁸

Although the IPC represents a revolutionary system for the prevention and resolution of food crisis, as many classification mechanisms, it presents several weaknesses. The development of the IPC depends on the timing, location and financial resources available. It may happen that the area

⁷⁵ The definition is contained in the ACF's 'Introduction to Food Security Intervention Principles (2008). The 'ACF' is a non-governmental organization that fights global hunger through the prevention, detection and treatment of undernourishment, source: 'IPC and Famine: Using the Appropriate Terminology and Scientific Thresholds', available at: https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Def_Meas.pdf.

⁷⁶ SUPRA note 74.

⁷⁷ Level 1 is arranged when households, 'in a common year', are normally able to have access to a sufficient quantity and quality of food and basic needs. The second level is provided when households can get an appropriate quantity of food in a common year, but they do not regularly consume an adequate quality of food. A food-related situation is certified as Moderate Chronic Food Insecurity when, in a common year, the sustainability of household incomes is limited and their capacity to withstand food emergencies is constrained. The last level, the Severe Chronic Food Insecurity, is proclaimed when in a typical year, households are unable to have a sufficient diet and there are deficits both in terms of quality and of quantity.

⁷⁸ The five phases arranged by the AMN classification are all based on the proportion between the population and the number of children suffering malnutrition. Depending on the percentage the categories are divided in: '*Acceptable*' (less than 5% of children are highly undernourished), '*Alert*' (5 to 9.9% of minors undernourished), '*Serious*' (10-14.9% of children acutely suffer malnutrition), '*Critical*' (there are progressively increasing rates of mortality and 15 to 29.9% of children are highly malnourished) and '*Extremely Critical*' (when there are evident food consumption gaps and over 30% of children suffer the lack of food).

suffering famine does not have appropriate resources or skill sets required to support the institutionalization of the IPC in such area. It is crucial to make sure that the overall resources necessary are accurately identified during the planning stages and that solutions are sought for any kind of significant shortfall. In particular, when making plans, care should be made to consider if there are sufficient human and financial resources to undertake analysis at the level of the proposed unit of analysis, and whether the number of units that need to be analyzed and classified is feasible. Hence, in accordance with what is economical and feasible the scope of the analysis should be adapted.⁷⁹ Moreover, the IPC's evaluations do not grant a subsequent resolution of the issue, the decisions taken as a consequence of the analysis imply a separate and different process. The ability of governments to coordinate data collecting and analysis procedures with decision-making procedures determines the IPC's applicability for informing decision making.

On the other hand, the institutionalization of this scale by political actors can determine a strong influence on the results of its processes, enabling the risk of non-impartiality. This may be achieved by restricting access to information. In fact, the full potential of the IPC is accomplished only when researchers have the complete capacity to access areas.⁸⁰

1.3 The Purposes of Starvation

Mass Starvation occurs as consequence of several harmful acts, which determines a strong limitation to the access to food, water and other means that provide essential care for a civilian population. These acts generate the conditions of death and humanitarian crisis.⁸¹ The perpetration of these acts may be used for different reasons, as a war weapon or as a strategy to accomplish political and military objectives. To understand the purposes of Starvation, it is useful to breakdown the concept of 'Starvation Crimes'.⁸² The term relates to a range of crimes, prohibited under several provisions, that use Starvation as a tool for the accomplishment of specific goals. For instance, Starvation crimes inflicted during a siege can settle the conditions to achieve direct control over the population. Hence, these legal prohibitions, many of which are relevant both in armed conflicts and during peacetime,

⁷⁹ IPC: 'Key Challenges and Limitations', available at: <https://www.ipcinfo.org/ipc-manual-interactive/overview/16-key-challenges-and-limitations/en/>.

⁸⁰ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC, 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian Criminal Law), page 35-37.

⁸¹ J. Macrae, A. Zwi, 'War and Hunger: Rethinking International Responses to Complex Emergencies' (London: Zed Books, 1994).

⁸² B. Conley, A. De Waal, 'The Purposes of Starvation: Historical and Contemporary Uses', (17 Journal of International Criminal Justice, 2019).

may be applied also to circumstances regarding the deprivation of food, water, or other objects indispensable for the survival of civilians.⁸³

About these circumstances, it is important to focus on the relationship between social, economic, political, environmental, and military factors that might render the effects of Starvation more or less damaging to the civilians who suffer them. In some locations, the presence of previous vulnerabilities (*i.e.*, underdeveloped countries lacking modern health facilities) combined with such acts have a catastrophic impact on the population.⁸⁴

1.3.1 The Mass Killing

The first kind of purpose that might be achieved through Mass Starvation is mass killing. This purpose occurs when members of a group of people are killed en masse by depriving them of food and all the objects indispensable for their survival. When the group is individuated as an ethnic, national, or racial community, there is the possibility to punish the crime through the legal framework provided by the crime of genocide. The requirement to criminalize it as a crime of genocide, is that these acts are perpetrated to '*deliberately inflict on the group conditions of life calculated to bring about its physical destruction in whole or in part*'.⁸⁵ As killing as an act of genocide, the crime of Starvation does not require the actual death of the entire population. The fundamental condition to englobe Starvation under the legal framework of the crime of genocide, is that the perpetrator must demonstrate the intent to destroy a significant part of the population. Extending Mass Starvation to the scale of lethality and atrocity associated with genocide is quite rare. However, throughout history, there are few cases of exploitation of Mass Starvation to cause mass killing. It has been used as a tool of genocide during the Holocaust, in the genocide of the Herero and Nama in Namibia, in the Armenian genocide, and in the Ukrainian Holodomor.⁸⁶ The Herero and Nama genocide, that occurred during the early 1900's, represents an emblematic case of colonial genocide inferred by Starvation. The atrocity was committed under the order of Lieutenant-General Lothar von Trotha, who commanded his forces to move the Herero to the Kalahari Desert and to impede the access to food and water, sentencing them to certain death. The ones who tried to escape from the desert were shot, hanged, tortured, or raped. According to studies, over 50,000 people died from these acts.⁸⁷

⁸³ A. De Waal, 'Mass Starvation: The History and Future of Famine' (Polity Press, 2017).

⁸⁴ B. Conley, A. De Waal, SUPRA note 80.

⁸⁵ Art. 2 (c) UN Convention on the Prevention and Punishment of Genocide.

⁸⁶ S. Rosenbeg, 'Genocide is a Process, Not an Event' (7 Genocide Studies and Prevention, 2012).

⁸⁷ D. Schaller, 'From Conquest to Genocide: Colonial Rule in German Southwest Africa and German East Africa' (Berghahn Books, 2010).

Another historic case which deserves to be mentioned is the Armenian Genocide occurred between 1915 and 1916. The crime was committed by the Ottoman army which attacked Armenian villages, assaulting, and killing hundreds of thousands of civilians. Those who managed to survive the massacre, most of whom were women and children, were deported in a forced march to today's Iraq and Syria.⁸⁸ Once arrived, they were brutally attacked again, even though most of the deaths were caused by hunger and thirst.⁸⁹ Historic studies showed that, without distinguishing the causes of death, among 600,000 Armenians died.⁹⁰

The intention to destroy a targeted group of people through Starvation surely requires an exceptional organizational capacity. This usually belongs to security forces, which are normally found in the authoritarian regimes. A paradigmatic example are the policies adopted by the Soviets to create the Ukrainian Holodomor. During 1932-1934 the Soviets decided to enact collectivization policies⁹¹, causing as side effect massive grain shortfalls. One of the regions which suffered the most from these policies was Ukraine. The intensification of harsh conditions such as the limitation of the citizen's movement, trade restrictions, access to food and agricultural supplies caused more than 3.3 million deaths.⁹² Thus the deprivation of OIS, together with the restriction of movement (which is crucial for having access to food supplies or for the production of food), may result as an intention of the perpetrator to kill civilians through Starvation.

1.3.2 The Control over a Population: The concepts of Counterinsurgency and Resettlement

The deprivation of objects indispensable for the civilian's survival may be used by the perpetrator as a tool to reduce the capacity of a group to resist its policies. The infliction of Starvation in this context, works as a weapon to defeat insurgencies. To counter rebellions, perpetrators often adopted strategies to strengthen their control over the population, drastically preventing opportunities of aiding and empowering the insurgents. Usually, this tactic occurs with the formation of resettlement camps. Resettlement, in this case, is a practice involving the forced relocation of civilians to special camps. By doing so, the relocated civilians are moved to areas where they can be easily monitored and

⁸⁸ R. Suny, 'They can Live in the Desert but Nowhere else': A History of the Armenian Genocide (Princeton University Press, 2015).

⁸⁹ B. Conley, A. De Waal, SUPRA note 82.

⁹⁰ Suny, SUPRA note 88.

⁹¹ Agricultural policy adopted by Stalin to revolutionize farming in the Soviet Union. Through this process, farmers were forced to abandon their private farms to join large collective farms (*kolkhozy*). This policy was undertaken jointly with the industrial campaign to develop the strength of the Union. (Britannica, available at: <https://www.britannica.com/topic/collectivization>).

⁹² T. Snyder, 'Bloodlands: Europe between Hitler and Stalin (BasicBooks,2012).

supervised.⁹³ Furthermore, in accordance with the Geneva Conventions, the displacement and the forced relocation of civilians constitutes a War Crime.⁹⁴

When the destination of the displacement of civilians are resettlement camps, there is clear liability for the perpetrator, due to his/her control exercised directly over the targeted group.⁹⁵

In several cases, resettlement camps during colonial, post-colonial, and Cold War insurgencies, constructed to control and separate armed groups from the civilian population, demonstrated to correctly be considered as incubators of Starvation crimes.⁹⁶ The creation of camps through forced displacement, with the limited provision of fundamental needs to the population determines as a result, the total dependence of the civilians towards the perpetrator. There are several examples regarding this issue, for instance: in British colonial wars in Kenya against the Mau Mau and in Malaya,⁹⁷ the Portuguese *aldeamentos*,⁹⁸ during the war of independence in Mozambique (1964-1973),⁹⁹ the forced relocation during the civil war in Mozambique (1976-1992), the resettlement camps in Ethiopia and the resettlement centers in Burundi (1996-2000). All the mentioned examples share in common the compulsory displacement of population from their villages to controlled spaces. During the relocation, violence was inflicted, crops and food were destroyed or rendered unavailable, causing the interned population to totally depend on the supplies given by the authorities. Beside this, other crimes took place inside the camps, such as rape, torture, and murder.

The common policy in such events, had as prime goals the separation between civilians from insurgents, preventing the provision of basic supplies from the population to the insurgents, develop security by improving the surveillance and the intelligence. Although the strategy adopted by the

⁹³ B. Conley, A. De Waal, See SUPRA note 77.

⁹⁴ Article 49, par.1 of the 1949 Geneva Convention IV provides: “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Article 147 of the 1949 Geneva Convention IV states: “unlawful deportation or transfer ... of a protected person” constitutes a grave breach of the Convention.

Article 17 of the 1977 Additional Protocol II states: ‘The have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

⁹⁵ D. Porch, ‘Counterinsurgency: Exposing the Myths of the New Way of War (Cambridge University Press, 2013).

⁹⁶ A. Pitzer, ‘One Long Night: A Global History of Concentration Camps (Little, Brown and Company, 2017).

⁹⁷ M.J. Ventura, SUPRA, note 29.

⁹⁸ From Portuguese, ‘village’.

⁹⁹ S. Brechenmacher, L. Walters, ‘Mozambique: War of Independence, Mass Atrocity Endings’ (World Peace Foundation, 2017), available at: <https://sites.tufts.edu/atrocityendings/2015/08/07/mozambique-war-of-independence>.

perpetrators enabled their ability to control their population, the consequence on the civilians were profoundly calamitous. The forced displacement of civilians implies the coercion of people to abandon their livelihoods.

Two emblematic precedents prove the magnitude of the damages and duration inflicted with resettlement:

- (i) During the war of independence in Mozambique (1966-1973), Catholic missionaries testified that between 6% and 8% of the population in every village¹⁰⁰ died due malnutrition and disease. Considering all the villages involved, around 60,000 Mozambicans perished because of these forms of deprivation under the Portuguese control.¹⁰¹
- (ii) The second case relates to the Ethiopian famine during 1983-1985 where there has been a consistent combination of different types of Starvation in the framework of counterinsurgency. The core of famine was delivered in the Northern provinces of Tigray and Wollo, that were the areas where insurgencies were fueled the most. To extinguish any form of rebellion, several tactics were adopted, including burning crops, destroying food stores, bombarding markets, and restraining the local trade and migration. These practices managed to cause the collapse of the agricultural economy, causing a tremendous increase of the food costs, generating famine.¹⁰² Beside the noted strategies, during the worst period of famine, during 1984, three rounds of forced resettlement were carried out.¹⁰³ As result, the government's actions provoked over 80,000 deaths due to deprivation of food and water and the impossibility to plant crops.

In the framework where a civilian population is distributed across a large geographical area, the commitment of Starvation crimes may also occur when, during a conflict, a party seeks to enforce the control over civilians by assaulting their livelihoods.¹⁰⁴ In such cases, perpetrators inhibit food production and its distribution, and impede the access to clean water and to health facilities. Furthermore, to achieve as quickly as possible their intent, attacks are often delivered to agricultural sites (*i.e.*, irrigation and stocks), transportation lines and markets. Finally, to avoid assistance and aid,

¹⁰⁰ Report of the Commissions of Inquiry on the Reported Massacres in Mozambique (UN Doc A/9621, 1974).

¹⁰¹ C.F. de Villiers, 'Portugal's War (11 Africa Institute Bulletin,1973).

¹⁰² B. Conley, A. De Waal, 'The Purposes of Starvation: Historical and Contemporary Use' (Journal of International Criminal Justice, 2019).

¹⁰³ A. De Waal, 'Evil Days: Thirty years of War and Famine in Ethiopia (African Watch, Human Rights Watch,1991).

¹⁰⁴ Visible patterns of this practice are found in Yemen (2016-present), Southern Sudan (1985-2004), Darfur (2003-2005) and again South Sudan (1985-2004).

humanitarian missions are often obstructed. When all these actions are perpetrated over several years, causing hundreds of thousands of deaths, they should be qualified as Starvation crimes.¹⁰⁵

1.3.3 The Seizure of Territorial Control: *The siege of Eastern Ghouta*

Starvation may also represent a military tactic to obtain territorial control. In this case, siege incorporates the context where Starvation crimes occur the most. In theory siege can be lawfully conducted during armed conflicts when perpetrators are not able to distinguish between civilians and combatants who are under siege. On the contrary, even in these situations, acts of deprivation of objects indispensable for civilian survival can be qualified as Starvation crimes.¹⁰⁶ A relevant problem concerning siege, beside the risk of assaulting the ones who are not part of the armed conflict, is that it needs one party involved in the conflict to control the accesses to the location while the other one involved denies the evacuation from that area. During sieges, the ones who are not part of the conflict may be used as human shields,¹⁰⁷ as a source of labor or of aid by the combatants. There is an enormous range of cases of siege throughout history. From a humanitarian perspective, one of the most notable precedents concerning sieges during warfare is the one of Eastern Ghouta in Syria.

Siege has been frequently used, during the Syrian conflict, by the government forces who often threatened the civilian to choose to surrender or to starve.¹⁰⁸ Eastern Ghouta is located at the geographical edge of Damascus and its siege lasted from 2013 to 2018. The issue began in April 2013, when the Syrian government army surrounded the area, which was the fortress of two armed opponents, the Free Syrian Army and the Islam Army. In 2015, the government army disconnected water facilities and imposed severe controls over the supplies of food and medicines, procuring harsh conditions for the civilians under siege. In the meanwhile, the government forces bombed the area and used in several assaults, chemical weapons in districts overpopulated.

Targets of the bombardments usually were civilian infrastructures like hospitals and schools.¹⁰⁹ In 2017, the government intensified its attacks to end the war, by both strengthening aerial bombardments and tightening the siege. One of the effects of this military campaign was the heavy

¹⁰⁵ A. De Waal, SUPRA note 83.

¹⁰⁶ J. Kraska, S.Power, 'Siege Warfare in Syria: Prosecuting the Starvation of Civilians'(Amsterdam Law Forum, 2016).

¹⁰⁷ Practice prohibited by Rule 97 of Customary International Humanitarian Law: 'Human Shields are prohibited'.

¹⁰⁸ 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (UN Doc, HRC/32/72, February 2018), available at: <https://reliefweb.int/report/syrian-arab-republic/report-independent-international-commission-inquiry-syrian-arab-4>.

¹⁰⁹ Beside the crime of Mass Starvation, the Syrian government army breached numerous principles and provisions of the International Humanitarian Law.

rise of the prices of the basic needs, worsening poverty and malnutrition.¹¹⁰ After the ending of the siege, fortunately no mass killing occurred in Eastern Ghouta, but while the government combatants returned, several serious violations of human rights were performed (*i.e.*, torture, rape, murder).

1.3.4 The Material Extraction: Enrichment through Deprivation

Conflicts may offer various chances for profiteering, in the case of Starvation, perpetrators may use deprivation as a mean for material extraction.¹¹¹ This may happen when Regimes serve themselves of the service of militias, allowing them to loot from enemies as a form of payment, causing Starvation as a repercussion of their actions. For instance, in the circumstances where there is a siege during a conflict, one of the most immediate and clear consequences is the heighten of prices of basic goods. Thus, the population of the besieged town will pay more for supplies and eventually for passage out of the town.¹¹² Taking in consideration the case of Eastern Ghouta, during 2003, the businessman Moheiddine Manfoush arranged an agreement with the Syrian government.¹¹³ He would supply milk, cheese, and wheat from farmers to the people inside the besieged area. However, as time went by, Mr. Manfoush became the only trader allowed to transport supplies and goods from the nearby farms to the center of Eastern Ghouta. Being the only one allowed, gave him the opportunity to control the prices. His merit was to transform a dairy trade into the control over the crossing of all kinds of goods, he became the one to rely on, for trading and sending furniture and aid to Ghouta.¹¹⁴ By the end of 2017, when the siege rigidified, the audacious business of Moheiddine Manfoush came to an end.

When the enrichment is earned through the control over a territory (*i.e.*, colonies), the deprivation of OIS is often instrumental to achieve forced dislocation of people. There are numerous cases that occurred in North America and Australia, where indigenous tribes were obliged to leave their home villages by foreign settlers, by damaging and burning their shelters and farms. Some of the most

¹¹⁰ ‘The Siege and Recapture of Eastern Ghouta’ (UN Doc. HTC/38/CRP.30, 20 June 2018), available at: <https://www.ohchr.org/en/press-releases/2018/06/un-commission-inquiry-syria-siege-and-recapture-eastern-ghouta-marked-war>.

¹¹¹ B. Conley, A. De Waal, ‘Purposes of Starvation: Historical and Contemporary Uses’ (Journal of International Criminal Justice 17, 2019).

¹¹² J. Kraska, S. Power, ‘Siege Warfare in Syria: Prosecuting the Starvation of Civilians’ (8 Amsterdam Law Forum, 2016).

¹¹³ N. Samaha, ‘The Black Market Kings of Damascus’ (The Atlantic, 3 October 2016), available at: <https://www.theatlantic.com/international/archive/2016/10/syria-war-economy-damascus-assad/502304/>.

¹¹⁴ The Economist, ‘Syria’s new war millionaires’, 1 June 2017, available at: <https://www.economist.com/middle-east-and-africa/2017/06/01/syrias-new-war-millionaires>.

ferocious examples regard the combination of Starvation and forced displacement of the Cherokee group and of the Navajo.¹¹⁵

The parallelism between Starvation and material extraction may occur also in the context of preventing and repressing insurgencies. This may happen when perpetrators allow armed groups to loot themselves from civilians as a form of payment. Clear examples are provided by the conflict in Darfur (2003-2005). The Sudanese government authorized militias to attack civilian villages exposing the inhabitants to severe famine, by destroying and damaging water facilities and agricultural reserves. The outcome of the combination of violence and deprivation caused over 200,000 deaths.¹¹⁶ Several benefits were provided by the strategy adopted by the Sudanese authority: the militias could satisfy themselves through expropriation, while the government asserted that it had no command and accountability on the soldier's actions.

1.3.5 To Flush Out a Population: ‘*The Guns and Beans*’ policy’

Starvation may be used as a weapon to remove or flush out a population from a remote area which is difficult to control. Usually, the objective of this tactic is to ensure the total control over a certain group of people. Unlike the contexts of counterinsurgency and siege, here the scope of Starvation is to seize the control over a population rather than the territorial control, coercing the victims to move into an area directly controlled by the perpetrator.¹¹⁷

There are two precedents related to flushing out of a population through Starvation crimes, Guatemala (1982-1983) and East Timor (1975). In the first case, also known as the ‘Guatemala genocide’,¹¹⁸ the Guatemalan government's army, with the intention of fighting guerillas and restructuring rural life, promoted counterinsurgency operations against Maya villages; a policy also known as ‘*the guns and beans policy*’.¹¹⁹ Even though many people managed to save themselves by escaping into the mountains, the first attacks caused several deaths and damages to the village's infrastructures. The ones who found shelter in the mountains were exposed to severe conditions of famine and malnutrition, due to the periodic attacks of the army, which destroyed all the food and water reserves that they could find. Both opponent combatants and civilians escaped into the mountains, exposing

¹¹⁵ B. Conley, A. De Waal, ‘Purposes of Starvation: Historical and Contemporary Uses’ (Journal of International Criminal Justice 17, 2019).

¹¹⁶ A. De Waal, *SUPRA* note 77.

¹¹⁷ B. Conley, A. De Waal, C. Murdoch, W. Jordash QQ, ‘Accountability for Mass Starvation: Testing the Limits of the Law’ (Oxford Monographs in International Humanitarian Law and Criminal Law, 2022), page 41.

¹¹⁸ R. Brett, ‘The Origins and Dynamics of Genocide: Political Violence in Guatemala’ (Palgrave, 2016).

¹¹⁹ J. Schirmer, ‘The Guatemalan Military Project: A violence called Democracy’ (University of Pennsylvania, 1988)

the civilians to major risks, rendering more difficult for the army the distinction between civilians and combatants. For the government, Starvation has been an efficient instrument to flush out the people who hid into the mountains, moving them into areas where they could be easily surveilled.¹²⁰

The second precedent relates to Starvation crimes committed in East Timor in 1975. After the end of the colonial regime of Portugal in Indonesia, the *Frente Revolucionária do Timor-Leste Independente* (also known as 'Fretilin')¹²¹ unilaterally declared its independence in November 1975. The declaration of independence was not accepted by Indonesia, whom nine days later decided to invade East Timor with the intent to remove the Fretilin's movement and leaders. The resistance of East Timor was able to escape into the mountains with civilians and Indonesian prisoners. The Indonesian forces intensified its offence by repeatedly attacking and by destroying food supplies, causing a massacre caused by hunger, thirst, and disease.¹²²

As well as the Starvation crimes in Guatemala, civilians and guerillas often sheltered in the same areas, worsening the chances to survive for the ones who were not an active party of the conflict. This implied a situation where civilians were 'hostages' of the combatants. In fact, guerillas to avoid the risk of being flushed out, prevented civilians to surrender, often sentencing them to death from deprivation and illness. To destroy any prospect of winning the war, the Indonesian forces stressed the opponent's capacity of battling by systematically destroying their livestock and sources of basic needs. At last, in 1978, the remaining combatants fell towards the Indonesian offence, the last Fretilin leaders were persecuted, captured and murdered. The civilians captured alive were forcibly displaced into resettlement camps ('strategic villages').¹²³ By late 1978, according to several studies,¹²⁴ there were about 270,000 people relocated into fifteen camps, living under inhuman health conditions. A crucial aspect regarding the conflict Indonesia and East Timor, where the ascertained mortality causes. Most of the deaths were caused by deprivation and Starvation rather than violence.¹²⁵

¹²⁰ V. Sanford, 'Buried Secrets: Truth and Humanitarian Rights in Guatemala' (Palgrave, 2003)

¹²¹ From Portuguese, 'Revolutionary Front for Independent East Timor'.

¹²² B. Conley. 'How Mass Atrocities End: Studies from Guatemala, Burundi, Indonesia, The Sudans, Bosnia-Herzegovina, and Iraq' (Cambridge University Press, 2016).

¹²³ I. Wessell and G. Wimhofer, 'Violence in Indonesia' (Abera Verlag Markus Voss, 2001).

¹²⁴ R. Cribb, 'How Many Deaths? Problems in Statistics of Massacre in Indonesia and East Timor' (2001).

¹²⁵ According to 'Conflicts-Related deaths in Timor-Leste 1975-1999 (available at. <http://www.cavr-timorleste.org/updateFiles/english/CONFLICT-RELATED%20DEATHS.pdf>, 2008), in total 84,200 where victims from hunger and disease, while around 18,600 died from murder.

1.3.6 The use of Starvation to influence a targeted group's Political Calculus

Deprivation may be undertaken for the purpose of altering a specific group's political calculus. This practice implies the coercion of political change, induced by the infliction of severe sanctions, blockade or persecutions as means of collective punishment.¹²⁶ This, without the need of taking control over a specific territory or a group of people, thus avoiding the assumption of accountability for governing. For instance, the use of economic sanctions as a tool to force governmental reforms, has been efficiently used by the United Nations in the context of Saddam Hussein's regime in Iraq (1991-1996).¹²⁷ By inflicting sanctions as a form of punishment, the UN and especially the United States, aimed at complying Iraq to the UN's resolutions,¹²⁸ ending their support to terrorism and forcing them to dismantle their equipment of nuclear and chemical weapons.¹²⁹ However, the sanctions had a catastrophic effect on the Iraqi population.¹³⁰ From a humanitarian perspective, particular concern emerged from the situation of the mortality rates. According to a UNICEF report, during the period of the sanctions, the standard of children's malnutrition escalated over 70%. To battle the side effects of the sanction's campaign, several efforts were made to decrease the impact on the civilians, a significant support was provided by the establishment of the United Nations' Oil-for-Food programme.¹³¹

Starvation and deprivation have been used as a form of collective punishment also in Sarajevo, in the context of the Bosnian war (1992-1995).¹³² The Bosnian Serb troops, with the use of heavy weapons, managed to segregate the opponent's frontlines into the city, transforming the assault into a siege by cutting off the outside access. By doing so, the objective of the Bosnian Serbs was to strengthen their negotiation position by controlling Sarajevo and its inhabitants.¹³³ Beside the numerous large-scale

¹²⁶ B. Conley, A. De Waal, C. Murdoch, W. Jordash QQ, See SUPRA note 35.

¹²⁷ A. Baram, 'The effects of Iraqi Sanctions: Pitfalls and Responsibility' (The Middle East Journal, 2000).

¹²⁸ In this context, some examples of the Resolutions adopted by the Un are the Security Council's Resolution NO. 661 (1990), which banned trade and financial resources for Iraq; Resolution NO. 687 (1991), which extended the prohibition on foodstuffs; Resolution NO. 706, 712 and 986, which banned Iraqi oil resources from the market for various years. (Source: United Nations Digital Library, available at: <https://digitallibrary.un.org/record/94221>).

¹²⁹ T. Weiss, D. Cortright, G.A. Lopez, L. Milnear, 'Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions' (Rowan and Littlefield Publishers, 1997).

¹³⁰ See SUPRA note 127.

¹³¹ The UN's Oil for Food Programme was constituted in 1995, as a temporary measure to face the unintended consequences of the UN's sanctions on Iraq. Under the Resolution NO. 986 (1995), all Iraqi residents, every month, had the possibility to obtain the Oil for Food basket as a form of aid and supply. Esteems show that about 60% of the population was totally depending on the supplies arranged by the UN's programme. The supply of OIS generally went aside with the demand and contributed reasonably to the stabilizing of the market prices.

Source: United Nations Office of the Iraqi Programme Oil for Food (2003), available at: <https://www.un.org/depts/oip/sector-food.html>.

¹³² R. Donia, 'Sarajevo: A Bibliography' (Ann Arbor: University of Michigan Press, 2006).

¹³³ R. Donia, See SUPRA 132; B. Conley, A. de Waal, SUPRA note 35.

murders committed towards the Bosnians, several health and nutrition studies ascertained heavy impacts on the civilians nutrition due to the siege.¹³⁴ Although clear evidence proved the deployment of Starvation, the *ad hoc* International Criminal Tribunal for former Yugoslavia, to accelerate the proceedings for the punishment of the perpetrators, solely focused on the acts of mass killing during the siege. No focus was dedicated to the use of Starvation crimes as a mean of punishment.

Another case of Starvation used as purpose to punish a certain population, is provided by the Israeli blockade of Gaza, which is lasting from 2007.¹³⁵ In this case, the blockade was settled soon after Hamas was voted to lead in the territory, with the justification of preventing possible offences from the Gaza strip. This process involved strong limitations to the delivery of electricity, water and medical care. Further restrictions were granted to the movement of people and goods into and out the strip. This method is quickly driving civilians to extreme poverty.¹³⁶ According to a report published by UNICEF,¹³⁷ the rate of food insecurity in Gaza is tragically raising. Beside the dramatic increase of unemployment in Gaza, the article documents that 1.3. million out of 2.1. millions of Palestinians in Gaza require food access.

1.3.7 Exploitation through Starvation: Coercing Labor

Creating conditions of Starvation can be useful for perpetrators to exploit civilian labour. This particular purpose is usually fulfilled in the areas where there is a strong disproportion between the population and the available food resources. This kind of objective is usually pursued in the scenario of prison camps, where the people's freedom is cancelled for reasons connected to conflicts.¹³⁸

Emblematic precedents in this context are provided by the exploitation of civilians in the Nazi concentration camps during WWII, and during the post-war in the Soviet's prison camps ('Gulags'). Specifically, at the end of WWII the former URSS found itself in a situation where resources were granted solely to its population, while German prisoners were forced to reconstruct the country destroyed by the war. Most of the prisoners were sent to Gulags in Siberia or to work tirelessly in the

¹³⁴ 'Human Losses in Bosnia and Herzegovina 1991-1995' (Research and Documentation Center Sarajevo, 2008); J. Vespa, F. Watson, 'Who is Nutritionally Vulnerable in Bosnia and Herzegovina?' (311 British Medical Journal, 1995).

¹³⁵ According to the Online Britannica Dictionary (available at: <https://www.britannica.com/topic/blockade-warfare>), the term 'blockade' relates to '*an act of war whereby one-party blocks entry to or departure from a defined part of an enemy's territory, most often its coasts. Blockades are regulated by international law and custom and require advance warning to neutral states and impartial application*'.

¹³⁶ Human Rights World Watch, World Report 2018: Israel and Palestine (2017), available at: <https://www.hrw.org/world-report/2018/country-chapters/israel/palestine>.

¹³⁷ 'The Gaza Strip| The Humanitarian impact of 15 years of Blockade' (published in June 2022), available at: <https://www.unicef.org/mena/documents/gaza-strip-humanitarian-impact-15-years-blockade-june-2022>.

¹³⁸ B. Conley, A. De Waal, C. Murdoch, W. Jordash QQ, SUPRA Note 35.

Ural's mines, where they were exposed to inhumane treatments (*i.e.*, hunger, illnesses and cold).¹³⁹ By early 1947 over 1 million prisoners died, with most of the deaths caused by dystrophy, which mainly occurs from hunger and malnutrition.¹⁴⁰ Similarly, during the Holocaust, the Nazis subjected the Jewish community and other ethnic groups, to forced labour, obliging prisoners to live in barbarous and humiliating conditions. The purpose of Nazi Germany was not just tackling the shortages of workforce left by the war, but even exterminating the 'enemies of the state' by exploiting them until death.¹⁴¹

The utilization of rationing to boost forced labour has been also adopted by the Japanese during WWII, against British prisoners of War. Here, prisoners were subjected to extreme conditions of hunger to construct a railway that offered a strategic connection with the areas under the control of Japan in Thailand and Burma.¹⁴²

1.3.8 Starvation for the Provisioning of Combatants: '*Soldiers Eat, Peasants Provide*'

During armed conflicts, in almost all the cases concerning non-industrial countries, the belligerent parties often adopt economic policies that cause, as side effect, famine. This usually happens when the involved combatants rely exclusively on the local population to feed themselves and to obtain basic needs. The essential issue related to this circumstance regards the fact that hunger strikes not just the opponents' community, but also the populations who support the army by providing them food. For instance, during the Japanese occupation of Indonesia (1942-1945), the Nippon army was sent with food supplies for just a few days.¹⁴³ Once the rations were finished, the Japanese commanders ordered the troops to feed themselves directly from the local communities.¹⁴⁴ Japan, to enhance its control over Indonesia, divided the country into three executive sections. One of them, Java, was a strategic asset for the rice production. Japan, glimpsing the opportunity to earn profit from

¹³⁹ M. Jakobson, 'Origins of the Gulag: The Soviet Prison Camp System' (University of Kentucky Press, 1993).

¹⁴⁰ A. De Waal, See SUPRA note 83.

¹⁴¹ The concept of 'work to death' or 'annihilation through work' was related to the policy of the 'Final Solution', by which certain categories of prisoners (*i.e.*, Jews, communists, homosexuals, Roma) were forced to work under conditions that would guide them to disease, injury, undernourishment and death. This mainly happened in concentration camps; a paradigmatic example is provided by the one in Mauthausen where, according to the 'Holocaust Encyclopedia' (available at: <https://encyclopedia.ushmm.org/content/en/article/forced-labor-an-overview>), 'prisoners were forced to run up 186 steps out of a stone quarry while carrying heavy boulders'.

¹⁴² A. De Waal, See SUPRA note 12.

¹⁴³ A. De Waal, See SUPRA note 35; P. Van der Eng, 'Food Supply in Java during War and Decolonization 1940-1950' (Australian National University, 2008), page 8-20, available at: https://mpra.ub.uni-muenchen.de/8852/1/Food_supply_Java_1940-50.pdf.

¹⁴³ T. Hutanamon, 'Shorts and Starvation' (Whiteboard Journal, 2015), available at: <https://www.whiteboardjournal.com/column/shorts-and-Starvation/>.

¹⁴⁴ See SUPRA note 143.

Indonesia, imposed a policy of control over the price, production and distribution of rice. The Japanese approach quickly led the inhabitants of Java to poverty and Starvation. Furthermore, several millions of Indonesians were displaced in labour camps to accelerate the production of supplies for the occupant's army.¹⁴⁵

On the other hand, a modern variant to this scenario is when perpetrators seek to maintain a civilian population under conditions of famine and deprivation to attract humanitarian assistance, from which soldiers can then loot and steal for their own use. The humanitarian emergency in Tigray (Ethiopia) illustrates an evident representation of this practice. Armed groups and militias, are repeatedly looting from the humanitarian aid, driving civilians to Mass Starvation.¹⁴⁶

1.3.9 Starvation to induce Massive Societal Transformation

Starvation and famine have been a frequent side effect during massive societal transformations. From a broad perspective, governmental policies adopted generating a social transformation do not constitute a crime themselves. However, when these campaigns plainly show catastrophic effects and are maintained for an extended period of time, the issue of liability might be brought up. The criminalization of these policies principally depends on how they are conducted. Generally societal transformation, to increase its efficiency, requires a harsh application, a strong repression of the dissent and when the harmful consequences are apparent, a refusal to change or to mitigate the reforms.¹⁴⁷

Starvation as an aftermath of social engineering, historically occurred also in the framework of colonization, where entire economies were integrated into imperial production systems. The process of colonization regularly implied a forced economic re-orientation of the colonies, organized in compliance with the political and economic objectives of the metropole.¹⁴⁸ In many cases, this situation led to deprivation and famine since these measures aimed at evicting native communities to take their land or to force them to grow 'cash crops' for the imperial power. The British policies in India (1770s-1940s) represent the clearest illustration of famine caused by the imposition of the social-economic transformation of colonies. In fact, most famines in India were caused by the exploitation of the natural resources by the British for their own financial gain. One of the most

¹⁴⁵I. Wessell and G. Wimhofer, 'Violence in Indonesia' (Abera Verlag Markus Voss, 2001).

¹⁴⁶ 'Joint Statement following the roundtable on the humanitarian emergency in Tigray, Ethiopia' (European Commission Statement, Brussels 10 June 2021), available at: https://ec.europa.eu/commission/presscorner/detail/es/statement_21_2942.

¹⁴⁷ A. De Waal, SUPRA note 12.

¹⁴⁸ 'Metropole': a colonial or imperial power, considered in relation to its colonies ore empire.

calamitous examples is the great famine in Bengal of 1770,¹⁴⁹ where the heighten of taxation and of profits imposed by the East India Company in combination with harsh climate conditions led to death over ten million people from undernourishment and diseases.

Throughout the 1900's, several Communist regimes shared the intention of enacting agro-economic transformations, with the goal of passing from an economic system essentially based on agriculture and farming to an industrial one. There are three major examples regarding this scenario, the Soviet agrarian reform (1930-34), China's 'Great Leap Forward' under the rule of Mao Zedong and the agricultural economic reform adopted in Cambodia by the Khmer Rouge.

From 1930 to 1934 the URSS adopted agricultural policies in Ukraine, southern Russia and Kazakhstan to undertake forcible collectivization of peasant farming.¹⁵⁰ In particular, Ukraine was the region which suffered the most these reforms. To understand the scale of the catastrophe caused by the Soviet's collectivization, the famine in Ukraine is commonly known as the 'Holodomor'.¹⁵¹ During the Holodomor, peasants were forced to abandon their lands and properties to collective farms. This process had harsh social consequences, it led to the disorganization of the rural economy and to shortages of food production. The lack of food and wealth provoked several civil rebellions that were often repressed with forced displacement or with the use of violence. To fully shut down any form of resistance, the Kremlin's strategy was to place whole Ukrainian cities, villages and farms in 'blacklists', preventing them from obtaining food and aid. Moreover, the inhabitants of these areas were forbidden to leave Ukraine, forcing them to starve. By the winter of 1932-33 the crisis reached its highest point, organized police groups pillaged peasants' households and destroyed crops, food supplies, and stores. The outcome of the Holodomor was unprecedented, over 13% of the population (3.9 million people) perished because of hunger and illnesses.¹⁵²

Due to the aftermath and the ruthlessness by which this economic overhaul was conducted, the Ukrainian famine of 1930's has been recognized by the European Parliament as a crime against humanity.¹⁵³

¹⁴⁹ S. Bhattacharya, S. Pal, 'Hunger and Holocaust: Three Trembling Famine of Colonial Bengal' (2021), pages 1-14.

¹⁵⁰ See par.1.2.1. 'The mass Killing'.

¹⁵¹ 'Holodomor', term which derives from the combination of Ukrainian words 'holod' (= hunger) and 'mor' (=extermination); 'Britannica History: Holodomor' (available at: <https://www.britannica.com/event/Holodomor>).

¹⁵² P.J. Kiger, 'How Joseph Stalin Starved Millions in the Ukraine Famine' (2019), available at: <https://www.history.com/news/ukrainian-famine-stalin>.

¹⁵³ European Parliament resolution of 23 October 2008 on the commemoration of the Holodomor, the Ukraine artificial famine (1932–1933): *'The European Parliament /.../ recognizes the Holodomor (the artificial famine of 1932–1933 in Ukraine) as an appalling crime against the Ukrainian people, and against humanity; strongly condemns these acts, directed against the Ukrainian peasantry, and marked by mass annihilation and violations of human rights and freedoms; /.../ calls on the countries which emerged following the break-up of the Soviet Union to open up their archives on the Holodomor in Ukraine of 1932–1933 to comprehensive scrutiny so that all the causes and consequences can be revealed and fully investigated'*.

Beside the Ukrainian Holodomor, one of the deadliest famines in modern history, occurred in Cambodia during the rule of the Khmer Rouge regime (1975-1979). During this period, the intention of the communist regime was to restructure Cambodia's economy by implementing reforms to the agricultural sector, for the purpose of creating an agrarian-socialist state.¹⁵⁴ This social-economic process, also known as the 'Super Great Leap Forward' aimed at obtaining economic independence based on self-sufficiency, preventing any form of foreign aid. According to the Khmer Rouge, this result could be achieved with a reform based on agriculture and intensive rice production. To feed the population and to support the political plans, the production of food was intensified by undertaking forced labour and by collectivizing peasants' farms. Over the time, the regime's leaders became aware of the terrible implications of their policies, yet they nonetheless upheld them firmly. The outcome was terrifying, over one million Cambodians perished from hunger and disease.

The most lethal famine due to economic policies has been the one provoked by Mao Zedong's '*Great Leap Forward*', attended in China between 1958 and 1962. In this case, Mao's intention was to enact a total restructure on social and economic grounds, by developing labor-intensive industrialization which prioritized labour over capital investment and machinery. With this process, the Communist Party thought to avoid the gradual process of industrialization through the progressive accumulation of capital and the purchasing of industrial machinery. The failure of this program relies on the fact there was a strong disproportion between the population density and the country's capacity to accumulate agriculture surplus. With the abandon of agriculture and harvesting for the intensification of the process of industrialization, an estimated 25-30 million people died from undernourishment.¹⁵⁵ Despite the massive suffering, China refused to change its policies until 1962, when the situation was no more sustainable. Hence, it is feasible to deduce from the aforementioned situations what are the grounds for raising the issue of guilt in relation to societal change strategies. As it is demonstrated by the cases of the Soviet's famine and Cambodia's Starvation, these policies are often adopted with coercion and with the repression of any form of resistance to their application. Furthermore, to achieve other objectives (*i.e.*, ethnic repression), these reforms are frequently applied in a selective and punishing manner and, despite the harmful effects become evident, no efforts are made to lessen the suffering.¹⁵⁶

¹⁵⁴ R. De Falco, 'Justice and Starvation in Cambodia: The Khmer Rouge Famine' (Cambodia Law and Policy Journal, 2014), pages 48-61, available at: http://cambodialpj.org/wp-content/uploads/2014/06/DCCAM_CLPJ_Defalco_FINAL2-PRINT.pdf.

¹⁵⁵ A. De Waal, SUPRA note 12; C.D. Brown, 'China's Great Leap Forward' (Association for Asian Studies, 2012), available at: <https://www.asianstudies.org/publications/ea/archives/chinas-great-leap-forward/>;

'Great Leap Forward: Chinese History' (Britannica, available at: <https://www.britannica.com/event/Great-Leap-Forward>).

¹⁵⁶ B. Conley, A. De Waal, C. Murdoch, W. Jordash QQ, SUPRA note 35.

CHAPTER 2: PROSECUTING THE CRIME OF STARVATION THROUGH INTERNATIONAL LAW

2.1. The Evolution of the Legal Prohibition: Mass Starvation under the Geneva Conventions

At the end of WWI, the international arena started to enact a slow process to temper and moderate the conduction of warfare, aiming at restricting the destruction of the enemy's property only to the circumstances of military necessity.¹⁵⁷ Although Starvation was recognized as one of the many inhuman practices carried out by the Nazis during the second World War, it was not prosecuted or criminalized during the Nuremberg Trials.¹⁵⁸

The necessity of regulating the methods of warfare and the will of protecting the victims of war, brought to the enactment of the four Geneva Conventions of 1949.¹⁵⁹

However, the explicit prohibition of deliberate Starvation was only supplied by the Additional Protocols to the Geneva Conventions of 1977.¹⁶⁰ The Additional Protocols were enacted to exhaustively regulate and moderate warfare, establishing a more stringent protection towards the victims of international and non-international armed conflicts.

In this sense, the legal framework related to Starvation was established by Article 54 (1) of the Additional Protocol I and by Article 14 of Additional Protocol II.¹⁶¹

Article 54 (1) sets the general forbiddance of the infliction of Starvation towards individuals who do not take actively part of the hostilities ('civilians').

¹⁵⁷ The first reference to Starvation as a prosecutable crime was provided by the 'Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties' report, which was presented to the Preliminary Peace Conference of 1919.

¹⁵⁸ After the end of WWII, the international community had the objective of punishing, as rapidly as possible, the Nazis liable for committing several serious crimes (*i.e.*, murder, deportation, genocide) during the Holocaust. Their goal was to prevent that those criminals could escape before their trial. In terms of efficiency, the commission of crimes like murder or deportation, compared to the infliction Starvation, was easier and quicker to prove. Therefore, the prosecution preferred to focus their strategy on proving crimes that were glaring. The Nuremberg Courts had jurisdiction over war crimes, crimes against humanity and crimes against peace and conspiracy to commit any of the foregoing crimes. (History: Nuremberg Trials).

¹⁵⁹ Geneva Conventions for the Amelioration of the Condition of Wounded, Sick in Armed Forces in Field (GC I, 12 August 1949); Geneva Conventions for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GC II, 12 August 1949); Geneva Conventions relative to the Treatment of Prisoners of War (GCIII, 12 August 1949), Geneva Conventions relative to the Protection of Civilian Persons in Time of War (GC IV, 12 August 1949).

¹⁶⁰ Additional Protocol to the Geneva Conventions of 1949 concerning the Protection of Victims of International Armed Conflicts (AP I, 8 June 1977); Additional Protocol to the Geneva Conventions of 1949 concerning the Victims of Non-International Armed Conflicts (AP II, 8 June 1977).

¹⁶¹ API and APII to the Geneva Conventions of 12 August 1949.

Both Article 54 (API) and Article 14 (AP II), to enhance the protection of civilians, explicitly prohibit several conducts aiming at attacking, destroying, or rendering useless objects indispensable for their survival, to enhance the protection of civilians.¹⁶² Moreover, to achieve a precise and exhaustive regulation, both the Additional Protocols provide a list of examples of objects indispensable for the survival (OIS), such as: foodstuffs, agricultural areas to produce of food, crops, water, livestock.

Furthermore, to prosecute and criminalize Starvation, it is necessary that the deprivation of the OIS must be carried out with the specific goal of denying the civilians of any mean of sustenance, to starve them, force their displacement or for any other reason.¹⁶³ As previously mentioned,¹⁶⁴ paragraph 2 of Article 54 of AP I provides exemptions to the legal framework established by the norm. In particular, the provision cannot be applied when targets of the offence are the OIS of the armed forces of the Adverse Party, or the ones that are used '*in direct support of the military action*'. This element highlights that the main scope of this provision, notwithstanding the regulation of the methods of war, is the prevention of any harm towards the civilian populations.¹⁶⁵

The intentional use of Starvation against civilians as a method of war has been regulated and prohibited in both international and non-international armed conflicts.¹⁶⁶ The legal framework established under the IHL, is given by Rules 54, 55 and 56.¹⁶⁷ These norms constitute an essential corollary to the legislation enacted by Geneva Conventions.

As disciplined by AP I and AP II, Rule 54 expressly prohibits any form of offence to objects indispensable for the survival of civilians.¹⁶⁸ Unlike the aforementioned laws of AP I and II, Rule 55

¹⁶² Article 54 of AP I: '*It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food- stuffs, agricultural areas for the production of foodstuffs, crops, live- stock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party...*'

Article 14 of AP II: '*Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as food- stuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works*'.

¹⁶³ J. Pejic, 'The Right to Food in Situation of Armed Conflict: The Legal Framework' (International Review of the Red Cross, 2001).

¹⁶⁴ See, 1.1.1, Chapter 1.

¹⁶⁵ P. Drew, 'Can we Starve Civilians?: Exploring the Dichotomy between the Traditional Law of Maritime Blockade and Humanitarian Initiative' (International Law Studies, 2019); D. Akande, E-C. Gillard, 'Conflict Induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfar' (17 Journal of International Criminal Justice, 2019); B. Conley, A. De Waal, C. Murdoch, W. Jordash Q.C, 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford, Oxford Monographs in International Humanitarian Law and Criminal Law, 2022).

¹⁶⁶ ICRC, 'Rule 53: Starvation as a Method of Warfare', available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule53>.

¹⁶⁷ For a full perspective of the subject, view Chapter I, pages 3 – 6.

¹⁶⁸ As Article 14 of AP II, the Rule prohibits offences such as: '*attacking, destroying, removing or rendering useless*' OIS of civilian population.

introduces the legal protection for the humanitarian relief for the civilians in need.¹⁶⁹ In compliance with the Geneva Conventions of 1949, States are required to enable free passage to all consignments of essential food supplies, water, clothing and medical care for the civilians.¹⁷⁰ The goal of these provisions is to guarantee aid and assistance to individuals who suffer the side effects of the war and are not able to provide themselves enough resources to survive.¹⁷¹ This implies that a humanitarian organization is unable to carry out its duties without the explicit approval of the State involved. It goes without saying that such consent cannot be denied for arbitrary reasons.¹⁷² This principle entails the circumstance by which, if it is clear that a certain civilian population is exposed to the concrete threat of Starvation and there is an organization providing, on a non-discriminatory basis, a solution to the crisis, the party is obliged to give its acquiescence.¹⁷³ On the other hand, the organization's personnel must undertake its functions by respecting the domestic law on access to territory and the security requirements into force.¹⁷⁴

The impediment of the supply of humanitarian activities to civilians is also expressly prohibited under the Rome Statute, establishing that each party involved in the conflict must refrain from such conduct.¹⁷⁵ Obligations of facilitating the humanitarian relief operations are provided by the domestic legislation of several States, highlighting the importance of the assistance to civilians during

¹⁶⁹ Rule 55 IHL: *'The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control'*.

¹⁷⁰ Article 23 of the Geneva Convention IV (1949).

¹⁷¹ D. Akande, B. Saul, 'Oxford Guide to International Humanitarian Law of Warfare' (Oxford: Oxford University Press, 2019); Humanitarian Policy and Conflict Research, 'Commentary on the Humanitarian Policy and Conflict Research Manual on International Law Applicable to Air and Missile Warfare' (Cambridge: Harvard University, 2010).

¹⁷² K. Dörman, L. Oswald-Beck, R. Kolb Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary (Cambridge University Press, 2003); J. Crowe and K. Weston-Scheuber, 'Principles of International Humanitarian Law (Cheltenham/Northampton, 2013); B. Conley, A. De Waal, C. Murdoch, W. Jordash Q.C, 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford, Oxford Monographs in International Humanitarian Law and Criminal Law, 2022); B. Conley, A. De Waal, 'The Purposes of Starvation: Historical and Contemporary Uses', (17 Journal of International Criminal Justice, 2019). Several States provide legislation in this sense, for example according to Australia's Commander's Guide (1994), in relation to blockades: *'There is a duty to consider, in good faith, requests for relief operations, but no duty to agree thereto. Any obligation upon a Party to permit a relief operation is dependent on the agreement of the State in control, given at an appropriate time'*

¹⁷³ This principle has been underlined in occasion of the 26th International Conference of the Red Cross and Red Crescent in 1995, where it has been established the obligation of all parties involved in conflicts *"to accept, under the conditions prescribed by international humanitarian law, impartial humanitarian relief operations for the civilian population when it lacks supplies essential to its survival"*, see SUPRA note 160.

¹⁷⁴ J.M. Henckaerts, L. Doswald-Beck, 'Customary International Humanitarian Law, Volume I: Rules' (ICRC, Cambridge Press 2009).

¹⁷⁵ For instance, Article 8 (2) (e) (iii) of the ICC's Statute, which forbids the actions that result in: *'Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict'*.

armed conflicts.¹⁷⁶ Obstructions of this nature were condemned also by the UN Security Council and the General Assembly with the publication of several resolutions, most of which were adopted during the crisis occurred in Bosnia Herzegovina during the mid 1990's.¹⁷⁷

At last, Rule 56 of IHL obliges the parties to the conflict to ensure freedom of movement of the authorized humanitarian relief organization necessary to the exercise of their activities. However, the prohibition of the movement's restriction is not absolute, it is possible to limit temporarily the movement only when there is an '*imperative military necessity*'.¹⁷⁸ The framework provided by the aforementioned rule, constitutes a corollary to the more general obligation, established by Rule 55, of granting civilian access to humanitarian assistance. Along with Rule 56, the freedom of movement is granted by Article 71 of the Additional Protocol I.¹⁷⁹

Anyhow, violations to these principles have been highly condemned, regardless the nature of the armed conflict, by the United Nations. For instance, the UN's Security Council requested all parties involved in the conflicts occurred in Afghanistan, Bosnia and Herzegovina and Somalia to guarantee the freedom of movement of the organizations engaged in humanitarian aid.¹⁸⁰ In line with what has been previously stressed, also in these cases, Parties of the armed conflict were legitimated to not follow the rules '*only in the case of imperative military necessity*'.¹⁸¹

¹⁷⁶ See the legislation on this subject of Australia, Italy, Canada, Congo, Colombia, Netherlands, United Kingdom, Norway, Germany. For instance according to Australia's Defence Manual (1994), in the situation of occupation, '*The occupying power is under an obligation to allow free passage of all consignments of medical and hospital stores ... as well as of essential foodstuffs, clothing and medical supplies intended for children under 15 years of age, expectant mothers and maternity cases, although it may require that distribution of such supplies be under the supervision of the Protecting Power*'; Canada's LOAC Manual (2001) in the section concerning the siege warfare states: '*The parties to a conflict are obliged to facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel*'; Germany's Military Manual (1992) establishes that: '*If the civilian population of a party to the conflict is inadequately supplied with indispensable goods, relief actions by neutral States or humanitarian organizations shall be permitted. Every State and in particular the adversary, is obliged to grant such relief actions free transit, subject to its right of control*'. (Source: ICRC, 'Practice relating to Access for Humanitarian Relief to Civilians in Need', available at: <https://ihl-databases.icrc.org/ar/customary-ihl/v2/rule55>).

¹⁷⁷ UN Security Council: Resolution No. 758 (8 June 1992), Resolution No. 761 (29 June 1992); UN General Assembly: Resolution No. 46/242 ('The situation in Bosnia and Herzegovina') and Resolution No. 49/196 ('The situation of Human Rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia', 10 March 1995).

¹⁷⁸ Article 71 (3) and (4) of the 1977 AP I state: '*Each party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel ... carrying out their relief mission. Only in case of imperative military necessity may the activities of the relief personnel be limited, or their movements temporarily restricted. Under no circumstances may relief personnel exceed the terms of their mission under this Protocol. In particular they shall take account of the security requirements of the Party in whose territory they are carrying out their duties. The mission of any personnel who do not respect these conditions may be terminated*'.

¹⁷⁹ Article 71 (3) of AP I: 'Personnel participating in relief actions', which at (3) states: '*Each Party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel referred to in paragraph 1 in carrying out their relief mission. Only in case of imperative military necessity may the activities of the relief personnel be limited, or their movements temporarily restricted*'.

¹⁸⁰ UN Security Council Resolution NO. 746 (S/RE/746/1992); NO. 819 (S/RES/819/1993); NO. 1080. (S/RES71080/1996).

¹⁸¹ Article 71 (3) Additional Protocol I

The exception in these cases is accepted on the basis that the assistance operations must not interfere with military actions, to avoid any possible threat to the safety of the humanitarian relief personnel. Furthermore, it is opportune to bear in mind that this kind of restriction can only be temporary. Thus, it is not unreasonable to believe that permanent restrictions in this sense, will not be accepted.¹⁸²

2.1.1 The crime of Mass Starvation under the Rome Statute: the amendment proposed by Switzerland.

The Rome Statute entered into force in 2002, setting on the international level the war crime of Starvation. As previously anticipated, the Statute of the International Criminal Court expressly provides the definition of ‘war crime’. In particular, it qualifies the war crimes as serious breaches of the Geneva Conventions (1949) and lists several acts that fall in within the definition of such crime.¹⁸³ As already stated,¹⁸⁴ Article 8 (2) (b) (xxv) of the ICC Statute criminalizes the intentional infliction of Starvation towards a civilian population as a method of warfare, undertaken by the deprivation of objects indispensable for their survival, including relief supplies as provided by the Geneva Conventions. Therefore, Starvation is not criminalized itself but solely as a method or plan of warfare.¹⁸⁵ Specifically, it frames the infliction of Starvation within the context of the preparation and execution of violence against the enemy. This principle supports the ideal by which, if Starvation was not employed as a method of warfare, the legal assumptions of Article 8 would not be respected. From this perspective, it is possible to believe that due to its connection to methods of warfare, it might be sufficient for the perpetrator to inflict Starvation without determining any concrete effect. This would mean that, in the background of war crimes, Starvation would be punished as a process, and not as an outcome or result.¹⁸⁶

¹⁸² S. Hutter: ‘Starvation in Armed Conflicts – An Analysis Based on the Right to Food’ (17 Journal of International Criminal Justice, 2019).

¹⁸³ ‘Willful killing; Torture or inhuman treatment, including biological experiments; Willfully causing great suffering, or serious injury to body or health; Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; Unlawful deportation or transfer or unlawful confinement; Taking of hostages’.

¹⁸⁴ For full explanation see Chapter 1, pages 6-8.

¹⁸⁵ For instance, the Starvation would not be criminalized if it occurred as a non-desired side effect of a certain policy or of food shortages due to a country’s economic crisis. What is criminalized by the Rome Statute, is the deliberate and intentional infliction of Starvation against civilians for the achievement of specific objectives. Therefore, the core aspect in this context is the intention by which the perpetrator intends to expose civilians to hunger.

¹⁸⁶ Y. Dinstein, ‘The Conduct of Hostilities under the Law of International Armed Conflict (Cambridge University Press, 2016), page 2-5.

This view reflects on the *mens rea*, since the intention of the offence must explicitly be to starve civilians as a method of war rather than just ‘starving civilians’.¹⁸⁷ The same cannot be said in the context of non-international armed conflicts. The absence in the Rome Statute of any legal provision concerning Starvation as a method of warfare in this kind of conflicts raised many concerns and criticisms.

Furthermore, the African Court of Justice and Human Rights has been up to now the only Court established with jurisdiction *ratione materiae* towards the war crime of Starvation in both international and non-international armed conflicts.¹⁸⁸ Unfortunately, this Court does not exercise any functions since its establishing treaty (*The Malabo Protocol*) has not reached the number of ratifications required to enter into force.¹⁸⁹

The first initiative providing a solution in this sense, was given on April 2018 by Switzerland, which proposed an amendment to Article 8 (2)(e) of the Statute of 1998. Specifically, the Swiss goal was to enhance the recognition of the prohibition of Starvation as a war tactic, without necessarily distinguishing between international and non-international armed conflicts.¹⁹⁰ In December 2019, the Assembly of the States Parties adopted the amendment to the Rome Statute unanimously.¹⁹¹ The ratification of the amendment constitutes a great step forward regarding the prevention and the prohibition of Starvation during armed conflicts, because the loophole left in the context of civil wars, constituted a legal obstacle for the punishment of such unlawful acts. With the proposal encouraged by Switzerland, now it would be rare for perpetrators to remain unpunished for the infliction of Starvation during non-international armed conflicts. Moreover, the amendment enforces humanitarian aid for the improvement of food insecurity and access of humanitarian relief to war

¹⁸⁷ M.J. Ventura, ‘Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities’; K. Dörmann, ‘Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary’ (Cambridge: Cambridge University Press); C. Byron, ‘War Crimes and Crimes Against Humanity in the Rome Statute of the International Criminal Court’ (Manchester University Press, Manchester/New York, 2009).

¹⁸⁸ The Court shall have jurisdiction over a number of crimes, including war crimes, genocide, crimes against humanity, terrorism, corruption, and crimes of aggression, as stated in Article 28A of the Malabo Protocol. It is plausible to assume that, had the Malabo Protocol been in place, the Court would have had jurisdiction over the crime of Starvation given that it is classified as a war crime under Article 28D of the Malabo Protocol. (Source: Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014).

¹⁸⁹ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: ‘Accountability for Mass Starvation: Testing the Limits of the Law’ (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022).

¹⁹⁰ ‘Report of the Working Group on Amendments’ (ICC-ASP/18/32, Assembly of State Parties, International Criminal Court, 3 December 2019); ‘Support for the Swiss Amendment to the Rome Statute of the ICC’ (Global Rights Compliance, available at: <https://Starvationaccountability.org/wp-content/uploads/2019/09/blog-on-amendment-RS-PDF.pdf>).

¹⁹¹ ‘Support for the Swiss Amendment to the Rome Statute of the ICC’, See SUPRA note 190.

zones.¹⁹² Thus, to summarize, the amendment proposed by Switzerland constitutes an outstanding change, tracing a new beginning for the prevention and criminalization of Starvation.

Specifically, its adoption:

- enhances the protection of civilians,
- aligns the Rome Statute to the position of the IHL and customary law which forbids the use of Starvation in both IAC and NIACs,¹⁹³
- encourages the State parties to ‘mirror’ this legislation in their domestic legal framework.¹⁹⁴

2.1.2 The importance of the UN’s Resolution No. 2417 (2018)

The Resolution No. 2417 on the Protection of Civilians in Armed Conflict was adopted by the UN Security Council on May 24, 2018.¹⁹⁵ It constitutes a significant contribution to the flourishing normative framework concerning the fight against food insecurity. The importance of the resolution consists of the recognition for the first time of the inextricable connection between conflicts and hunger, and the recognition of the relevance of International Humanitarian Law, that must be observed as a crucial tool for the prevention of Starvation in the context of armed conflicts.¹⁹⁶

The UN Security Council, expressing its concern upon the devastating impact on the growing number of food insecurity induced by armed conflicts, communicated that all governments are urged by Resolution No. 2417 to safeguard international humanitarian law in all circumstances and to guarantee liability for mass atrocity crimes. The resolution further reiterates that it is the states' primary duty to safeguard the population over their whole territory.¹⁹⁷ Thus, State parties must comply with their obligations under international humanitarian law with regard to the protection of civilians and on being mindful to spare civilian objects (including farms, markets, water systems, mills, food production and distribution stores) emphasizing that armed conflicts, violations of international law, and associated food insecurity may be factors in the cause of forced displacement.

¹⁹² Assembly of State Parties, ‘Report of the Working Group on Amendments’ (International Criminal Court, 2-7 December 2019), available at: https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP18/ICC-ASP-18-32-ENG.pdf.

¹⁹³ International and Non-International Armed Conflicts

¹⁹⁴ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: ‘Accountability for Mass Starvation: Testing the Limits of the Law’ (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), pages 111 - 112

¹⁹⁵ UN Security Council Resolution NO. 2417 (S/RES/2417, 24 May 2018), available at: <https://digitallibrary.un.org/record/1627380#record-files-collapse-header>.

¹⁹⁶ ‘Adopting Resolution 2417 (2018), Security Council Strongly Condemns Starving Civilians, Unlawfully Denying Humanitarian Access as Warfare Tactics’ (UN Meetings Coverage and Press Releases, SC/13354, 24 May 2018), available at: <https://press.un.org/en/2018/sc13354.doc.htm>.

¹⁹⁷ SUPRA note 195.

The Security Council, highlighting the importance of the humanitarian operations for the assistance to civilians during hostilities, strongly condemns the unjustified denial of these kind of operations, and the deprivation of all the objects indispensable for the civilian's survival. The Council also stated that, if necessary and in accordance with established procedures, it might consider imposing penalties that would apply to people or organizations impeding the distribution or delivery of humanitarian aid to civilians in need.¹⁹⁸ Furthermore, despite the invitation to the Secretary-General to continue to furnish information on the humanitarian crisis, it '*strongly urges*' States to undertake independently, impartially and effectively investigations within their jurisdiction into the violations of IHL related to the infliction of Starvation towards civilians as a war tactic. Moreover, it requests, under appropriate circumstances, to pursue those responsible for their actions in accordance with national and international law to strengthen preventative measures, ensure responsibility, and redress victims' injustice.¹⁹⁹

The Resolution made a significant shift in the context of food security, by focusing the topic into the realm of peace and security, instead of discussing it as an issue solely connected to climate change, humanitarian aid and poverty. This change of view underlines how, throughout the past few decades, there have been an increasing number of hunger-related armed conflicts,²⁰⁰ highlighting the importance of adopting preventive measures to avoid the explosion of further food crisis. This resolution may represent the starting point for a better collaboration between the international community and its Member States for the prevention of famine and Starvation and for the protection of the right to food.²⁰¹

2.2 Reasons for the 'Unprosecution' of Starvation

Even though Starvation has been explicitly criminalized by customary and treaty law, no one has been yet prosecuted at international level for such crime. The focus of the International Criminal Law (ICL) towards other '*more direct*' atrocity crimes and the difficulty of determining whether a lawful military action (causing food crisis) crosses the line becoming a crime of Starvation, appear to have discouraged judicial solutions.²⁰² The ICL prosecutions are usually more concentrated on violent

¹⁹⁸ 'Adopting Resolution 2417 (2018), Security Council Strongly Condemns Starving of Civilians, Unlawfully Denying Humanitarian Access as Warfare Tactics', available at: <https://press.un.org/en/2018/sc13354.doc.htm>.

¹⁹⁹ See SUPRA note 198.

²⁰⁰ For instance, the Civil War in South Sudan (2013-2018), the Armed Conflicts occurred in Syria (2011-2019), the Conflict in Yemen (2014 – ongoing).

²⁰² M.J. Ventura, 'Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities (Journal of International Criminal Justice, 2019).

deaths, this happens because these crimes compared to Starvation, are usually easier to prove allowing the prosecutors to pursue less controversial legal strategies.²⁰³

The institution of International Courts has usually constituted the direct result of the political and historical moment. For this reason, it is comprehensible that prosecutors pay more attention to the circumstances that are under the public eye. The offences related to Starvation have never captured the same attention than the one expected for other crimes (*i.e.*, mass killing, torture, deportations, etc.). In fact, the public and political attention towards Starvation has been regularly channeled into humanitarian aid, rather than criminal accountability for determining conditions of food insecurity. Therefore, even though prosecutors might have tested the boundaries of the existing legislation forbidding the infliction of Starvation as a method of warfare, there has always been a lack of demand from the international public and political opinion.²⁰⁴ In addition, notwithstanding the prosecution of mass Starvation, in times of armed conflicts, it is complex to determine criminal accountability. It is surely challenging for international prosecutors to identify efficiently the causal nexus between the conduct of the warring parties, the harmful outcomes on the civilian victims and the criminal intent.²⁰⁵

As demonstrated by the atrocities occurred in Yemen, Syria and South Sudan, Starvation is inferred usually in countries that present a high level of food instability, malnutrition or disease that either already existed or were partially provoked by concurrent economic crisis. The cumulus of these factors has often persuaded international prosecutors to criminalize the perpetrators of other crimes that are usually committed alongside Starvation.²⁰⁶ This situation occurred for instance in the Prosecution for the crimes committed in Darfur, Sudan (2003-2008), where the Sudanese Government (held by President AL-Bashir) committed several atrocities, including mass killing, forced displacement, deprivation of OIS. The Security Council referred the case to the International Criminal Court which established arrest warrants to Al-Bashir and other members of the government forces for the commission of war crimes, crimes against humanity and genocide.²⁰⁷ Even though elements of Starvation were detected by the Prosecution, the crime was not prosecuted as a separate crime but was included within the legal framework crime of genocide.²⁰⁸ Similarly, in the Karadžić

²⁰³ S. Hutter, 'Starvation as a Weapon: Domestic Policies of Deliberate Starvation as a Means to an End under International Law' (Leiden/Boston, Brill Nijhoff, 2015).

²⁰⁴ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), pages 71 -73

²⁰⁵ N. Mulder, B. van Dijk, 'Why did Starvation Not Become the Paradigmatic War Crime in International Law (Oxford Academic, 2021).

²⁰⁶ Global Right Compliance: 'The Crime of Starvation and Methods of Prosecution and Accountability' (2019).

²⁰⁷ Al Bashir Case: The Prosecutor v. Omar Hassan Ahmad Al Bashir', (ICC-02/05-01/09, International Criminal Court), available at: <https://www.icc-cpi.int/darfur/albashir>.

²⁰⁸ J. Flint, A. De Waal, Darfur: 'A new History of a Long War' (London: Zed Books, 2008).

case, although it was stated that many civilians died from Starvation,²⁰⁹ he was charged for the commission of genocide, crimes against humanity and several breaches of the Geneva Conventions, while no separate charge for Starvation was indicted.

2.2.1 Legal Strategies for the prosecution of Starvation

The most challenging aspect related to the prosecution of Starvation is proving the perpetrator's intention to starve. Some causes of famine may be easier to prove (such as the lack of food and water in military detention facilities), but many prosecutions will be necessary to establish causative circumstances where legitimate military operations and violations of international humanitarian law are intimately related. In these situations, when they must establish a connection between the unlawful behavior and the criminal intent, the prosecutors face their greatest challenges. As an issue of evidence, proving causation is crucial.²¹⁰ In this context, the prosecution must focus on the relationship between the accused's actions (*i.e.*, the deprivation of OIS) and the effects that they have on the civilian population. In particular, to prove the intent, the perpetrator must have caused Starvation with the awareness of the outcome of his/her actions.²¹¹

Thus, these issues may be resolved through a commonsense analysis of the context, the cause, the effect and the accused's awareness ('analysis of the chain of causation').

²⁰⁹ IT-95-5/18-T (ICTY, 24 March 2016), para. 657, '*Based on the above, the Chamber finds that Bosnian Muslims and Bosnian Croats from multiple locations were brought to and detained at Batković camp from June 1992 until 1995 by Serb Forces. The detainees were held in poor conditions which included lack of space, inadequate bedding, poor sanitary conditions, lack of food, and inadequate medical care. Detainees were subjected to regular beatings, sexual mistreatment and were forced to work at a number of locations*

in extreme conditions including on the frontlines digging trenches and clearing mines. The

Chamber finds that some detainees died as a result of Starvation, exhaustion or while working on

2120 the frontlines', para 2453: 'With respect to victims who died as a result of cruel and inhumane treatment at detention facilities, the Chamber found that the victims died in circumstances which showed an intent by the perpetrators to kill or at least willfully cause them serious bodily harm, which they should reasonably have known might lead to death. For example the Chamber found that the detainees were severely beaten inter alia with chains and metal rods. Others were subjected to such conditions that they died from Starvation, exhaustion, or suffocation'.

²¹⁰ War Crimes and Crimes Against Humanity in the Rome Statute of the International Criminal Court: A Commentary' (Munich/Oxford/Baden-Baden, 2016); S. Hutter, 'Starvation as a Weapon: Domestic Policies of Deliberate Starvation as a Means to an End under International Law' (Leiden/Boston, Brill Nijhoff, 2015); D. Akande, E-C. Gillard, 'Conflict Induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfar' (17 Journal of International Criminal Justice, 2019).

²¹¹ K. Dörman, L. Oswald-Beck, R. Kolb Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary' (Cambridge University Press, 2003); M.J. Ventura, 'Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities (Journal of International Criminal Justice, 2019).

In accordance with the Rome Statute, the international criminal accountability of an individual may be held if that person:

- Commits a crime, either as an individual (so-called *direct perpetration*), jointly with another (*co-perpetration*) or through another person, regardless of whether that other person is criminally responsible (*indirect perpetration*);²¹²
- Orders, solicits or induces the commission of the crime;
- With the objective of facilitating the commission of a crime, aids, abets or otherwise assists in its commission or its attempted commission (including providing the means for its commission);
- Contributed to the commission of a crime or attempted its commission, by a group of individuals acting with a common intent ('complicity');²¹³
- Failed to avoid, repress or punish the realization of the crime ('command or superior responsibility').²¹⁴

In order to hold political or military leaders accountable on an individual basis, it must be demonstrated their contribution to the commission of crimes carried out by their subordinates.²¹⁵ Prosecutors frequently favor forms of accountability that impute criminal responsibility for the people in charge of criminal organizations or groups, who exercise control over or contribute to illegal plans.²¹⁶ These forms of accountability may be relevant in the circumstances where:

- There is a common organized plan shared by several perpetrators which guides to the commission of the crime (elements required for the prosecution of co-perpetration and indirect co-perpetration). For the establishment of criminal responsibility, the prosecution must prove that the accused contribution was crucial for the realization of the common plan.²¹⁷

²¹² B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), page 121.

²¹³ Article 25 (3) (a-d) of the Rome Statute.

²¹⁴ Article 28 (a) of the Rome Statute.

²¹⁵ J. De Hemptinne, R. Rotj, E. van Sliedregt, 'An Introduction to International Criminal Law and Procedure' (Cambridge: Cambridge University Press, 2019).

²¹⁶ This principle refers to the situations of co-perpetration, indirect perpetration, indirect co-perpetration, the responsibility of the superior.

²¹⁷ ICC-01/04-01/06-2842, Trial Chamber (2012), 'Judgement Lubanga Dyilo', para 990-1026. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012_03942.PDF.

- The accused exerts control over the perpetrator's conducts, who comply with the accused's orders due to his/her hierarchal position within the organization (element required for the prosecution of indirect co-perpetration and indirect co-perpetration).²¹⁸
- The accused contributed to the commission of a crime carried out by a group of people acting with a common objective. Furthermore, the accused must have contributed with the awareness that the group's intent was to commit the crime.
- The accused failed to prevent or repress the crimes committed by individuals who are under his command or authority. For the establishment of criminal accountability, the accused must have the awareness and knowledge of the crimes undertaken by his/her subordinates or the fact that the accused should have acknowledged the commission of such misconducts.²¹⁹

In all the mentioned cases, prosecutors must consider these elements (or indicators) and look for evidence proving their validity in relation to the crime of Starvation committed by the offenders. For instance, the determination that the accused had a significant role in a larger scheme or agreement to inflict Starvation, as well as the perpetrator's authority over military organizations that contributed to the deprivation of objects indispensable for the civilian's survival would be crucial.

Since only the accused has direct knowledge of his own mental state, and since he is unlikely to testify about his own intent, intent is typically not provable through direct evidence. Because of this, prosecutions at the international level frequently establish the intent through an examination of the surrounding circumstances that demonstrate beyond any reasonable doubt either that a perpetrator had a concrete desire to engage in the misconduct or a continuation of conduct that made it nearly impossible for the accused to imagine that the consequences would not occur.²²⁰ Hence, it is understandable why according to ICL, circumstantial evidence is fundamental for the prosecution of such crimes. Unlike direct evidence, the circumstantial one necessitates that the proofs obtained lead together to the deduction that a specific outcome was intended or would occur in the natural course of the events. For the determination of whether the accused intended to inflict Starvation towards civilians as a method of warfare, it is necessary for the prosecutors to examine the context where the crime occurred, its nature, the manner and the duration of the unlawful conduct (*i.e.*, if the conducts were held in an organized manner, if there were long-term).²²¹ The burden of proof lies with the

²¹⁸ ICC-01/04-02/06-309 Pre-Trial Chamber Decision on the Confirmation of Charges, 'Ntaganda' (2014), para. 104-135, available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2014_04750.PDF.

²¹⁹ Article 28 (a)(ii – ii) of the Rome Statute.

²²⁰ ICC-01/04-01/06-2842, Trial Chamber (2012), 'Judgement Lubanga Dyilo' para 990-1026. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012_03942.PDF.

²²¹ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), pages 126 - 130

prosecution, and any determination of intent must be proven beyond any reasonable doubt. Therefore, the court has broad discretion on how to handle the evidence when the deprivation happens in circumstances where no legitimate motive can be deducted.

In the cases where Starvation occurred in relation to the conduction of a lawful practice or act, a deeper analysis will be necessary. In these cases, it is reasonable to believe that accountability would not be established if the perpetrator, by undertaking his/her lawful activities which determined Starvation:

- Respected the relevant IHL's principles and prohibitions (*i.e.*, prohibition of collective punishment),²²²
- Mitigated and alleviated the civilian suffering (*i.e.*, not impeding access to humanitarian relief organizations).

It is interesting to highlight and remember that the prohibition to attack the OIS is not general, the Additional Protocol I provide several exemptions. Beside the ones provided by Article 54 (3)²²³, the attacks towards OIS are not unlawful when they are employed to prevent or to slow down the enemy from invading a territory,²²⁴ or in the context of blockades and sieges, as a way of gaining military advantage.²²⁵ These circumstances entail an exemption from the infringement of the IHL unless, by committing such actions, there is also the intent to starve the civilian population.

On the other hand, when all other requirements are met and the accused pursues a legal goal while also adopting the intention to starve, the framework provided by Article 8 of the ICC's Statute may be applied. In these cases, the challenge for the Prosecution is to establish whether the perpetrator by following lawful objectives, had also the intention to starve civilians. In this sense, it is important to examine if the lawful purpose was override by the intention to starve. In terms of responsibility, the prosecutions must take in consideration the principle of proportionality. Hence, as an example, the offences lawfully conducted during warfare, provoking an excessive harm towards the civilians,

²²² API Article 75; AP II Article 4

²²³ See page 3-4 of the Chapter I; when OIS constitute a sustenance solely for the members of its armed forces, in direct support of military action, however, in no case actions against OIS shall be taken when they might leave the civilian population with inadequate food or water.

²²⁴ Article 54 (5) of AP I: '*In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity*'.

²²⁵ Rule 53 of the ICRC Customary Law: '*The prohibition of Starvation as a method of warfare does not prohibit siege warfare as long as the purpose is to achieve a military objective and not to starve a civilian population*'.

constitute a breach of the principle of proportionality, therefore, the alleged perpetrator may be judged as liable.²²⁶

According to the Rome Statute, the denial of access to humanitarian operations constitutes a Starvation crime.²²⁷ Therefore, State parties have the obligation to allow access to humanitarian assistance and aid. However, there are specific situations where the denial of them does not constitute a violation of the IHL. This happens when:

- The supplies do not have the nature of humanitarian aid (*i.e.*, in 2010, Israel blocked relief supplies headed to Gaza because they were transporting cement that was used by Hamas for the constructions of bunkers²²⁸);
- Supplies are not allowed on the basis of military necessity (*i.e.*, when the humanitarian relief personnel exceed its mandate by engaging actions in favor of the opponent party)²²⁹;
- In cases when special technical considerations are required for the delivery of humanitarian aid, the Protecting Power may impose restrictions on the temporary mobility of aid workers or impose the requirement that deliveries be made while being overseen locally.²³⁰

Indeed, also in these cases the prosecution must have an approach closely linked to the concrete case, taking in consideration all the relevant circumstances.

²²⁶ A Gillespie, 'A History of the Laws of War: Volume 2 – The Customs and Laws of War with Regards to Civilians in Times of Conflict' (Oxford/Portland, Hart Publishing, 2011); D. Akande, E-C. Gillard, 'Conflict Induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfar' (17 Journal of International Criminal Justice, 2019); M.J. Ventura, 'Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities (Journal of International Criminal Justice, 2019).

²²⁷ Article 8 (b)(2)(xxv).

²²⁸ C. Levinson, 'UN Aid Group Israel Deliberately Hampering West Bank, Gaza Relief Efforts' (2010), available at: <https://www.haaretz.com/2010-05-30/ty-article/un-aid-group-israel-deliberately-hampering-west-bank-gaza-relief-efforts/0000017f-db91-df62-a9ff-dfd73f690000>.

²²⁹ Article 71 (4) AP I.

²³⁰ Article 70 (3) AP I: '*The Parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel in accordance with paragraph 2: shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted; may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power; shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned*'.

2.2.2 Prosecuting Starvation as a Crime against Humanity

For the purpose of prosecution, even though Starvation is defined as a War crime, it may be also punished under the legal framework of ‘*crimes against humanity*’.²³¹ For the categorization of such act as a crime against humanity, a contextual element is required. In particular, there must be a widespread attack (*i.e.*, deliberate deprivation or denial of OIS) against a civilian population, conducted with awareness and knowledge. According to the Rome Statute, the attack requires a ‘*course of conduct involving the multiple commission of acts, rather than a singular act*’.²³² In this context, the provision underlines that the infliction of Starvation can be provoked alongside with other related crimes, underlining the existence of patterns of crimes reflected in the commission of such criminal conducts.²³³ To inquire the deprivation of food and water under the umbrella of Crimes against humanity, beside the intent and the seriousness of the offence, the conduct must be systematic.²³⁴ Thus, Starvation must be part of an organized plan, causing massive consequences towards a large-scale of people. For instance, it might be qualified as an ‘*other inhuman act*’. To consider such actions as an inhuman act, it must present elements of a certain gravity, such as causing serious suffering or serious injury to the physical or to mental health.²³⁵ To punish and prevent similar

²³¹ The definition of Crimes against Humanity is provided by Article 7 (1) of the Rome Statute (1988): for the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

²³² The Rome Statute (1998), Article 7 (2): ‘*Attack directed against any civilian population*’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack’.

²³³ O. Triffterer, K. Ambos, ‘The Rome Statute of the International Criminal Court: A Commentary’ (Verlag C.H. Beck/Hart Publishing/Namos, Munich/Oxford, 2016).

²³⁴ In this sense, it might be useful to mention the case ‘Prosecutor v Augustin Ndindiliyimana, Nzuwonemeye (ICTR-00-56-A, Judgement, AC, 11 February 2014), which at para. 260, states: ‘*The Appeals Chamber recalls that an enumerated crime under Article 3 of the Statute constitutes a crime against humanity if it is proven to have been committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial, or religious grounds. The term “widespread” refers to the large scale nature of the attack and the number of victims, whereas the term “systematic” refers to “the organized nature of the acts of violence and the improbability of their random occurrence”.* With respect to the *mens rea*, the perpetrator must have acted with knowledge of the broader context of the attack, and with knowledge that his acts (or omissions) formed part of the widespread or systematic attack against the civilian population’. Similarly, in the Karadzic case (‘Prosecutor v Radovan Karadzic, IT-95/18-7, 16 March 2016), at para. 471-472, the court underlines the general requirements for the crimes against humanity, which are: ‘(i) There must be an attack; (ii) the attack must be directed against any civilian population; (iii) the attack must be widespread or systematic; (iv) the acts of the perpetrator must be part of the attack; and (v) the perpetrator must know that there is a widespread or systematic attack directed against a civilian population and know that his acts constitute part of this attack’.

²³⁵ Article 7 (1)(k) ICC Statute.

acts, the standards of international humanitarian law and human rights law can provide guidance, yet its assessment must ultimately entail a value judgement.²³⁶ Thus, the legal requirements of seriousness and gravity of the offences must be evaluated basing the prosecution on a case-by-case perspective with regard to the individual circumstances.²³⁷

For the ascertainment of the mental element, the approach of the ICC differs from the one followed by the ICTY and the ICTR. According to the International Criminal Court, the mens rea of the crime, as stated by Article 30 of the Statute,²³⁸ includes the cases of dolus directus of the first and second degree.²³⁹ On the other hand, towards the ad hoc tribunals, it is sufficient that the perpetrator is aware that his conduct ‘*was likely to cause*’ relevant injuries or sufferings.²⁴⁰

With regard to the actus reus, since Starvation refers to the deliberate denial for civilians to have access to food and water, it provokes serious physical injuries (*i.e.*, malnourishment, detriment of strength and metabolism, ...).²⁴¹ In addition to their personal pain, the victims are burdened with the

²³⁶ M.J. Ventura, ‘Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities’ (Journal of Criminal Justice, 2019), pages 793-795.

²³⁷ This perspective was set by several judgments of the International Court for former Yugoslavia, such as: ‘Prosecutor v. Kordić and Čerkez’, Appeal Judgement, IT-95-14/2A (December 2004), para. 117; ‘Prosecutor v. Prlić’, Trial Judgement, IT-04-74-T (May 2013), para. 78.

²³⁸ Article 30 ICC Statute which states: ‘*Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. For the purposes of this article, a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. For the purposes of this article, "knowledge" means awareness that a circumstance exists, or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly*’.

²³⁹ ICC, ‘Prosecutor v Katanga and Ngudjolo, ICC-01/04-01/07-717 (30 September 2008), at para. 455 establishes: ‘*In respect of the subjective element, the Chamber notes that in addition to the requirement that the objective elements were committed with intent and knowledge pursuant to article 30 of the Statute, article 7(l)(k)(3) of the Elements of Crimes establishes that the "perpetrator must also [have been] aware of the factual circumstances that established the character of the act." This offence encompasses, first and foremost, cases of dolus directus of the first and second degree*’.

²⁴⁰ See ICTR, ‘Prosecutor v. Galić’, Trial Judgement, IT-98-39-T (December 2003), para. 154, which states: ‘*The intention to inflict inhumane acts is satisfied where the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victim, or where he knew that his or her act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity*’; ICTY, ‘Prosecutor v. Milosević’. Trial Judgement, IT-98-29/1-T (December 2007), para. 935, which states: ‘*The mens rea for the crime of inhumane acts is satisfied if, at the time of the act or omission, the perpetrator had the intention to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victim, or the perpetrator knew that his or her act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity*’; ICTR, ‘Prosecutor v. Kayishema and Ruzindana’, Trial Judgement, ICTR-95-1-T (May 1999), para. 153, which establishes: ‘*The Chamber is no doubt that a third party could suffer serious mental harm by witnessing acts committed against others, particularly against family or friends, However, to find an accused responsible for such harm under crimes against humanity, it is incumbent on the prosecution to prove the mens rea on the part of the accused. Indeed, as stated above, inhumane acts are, inter alia, those which deliberately cause serious mental suffering*’.

²⁴¹ B. Conley, A. De Waal, ‘The Purposes of Starvation: Historical and Contemporary Uses’ (Journal of International Criminal Justice).

mental anguish of the others around them. Therefore, due to its severity and to its catastrophic effects, it is reasonable to prosecute Starvation as an ‘other inhuman act’ in connection with the crimes against humanity.

2.2.3 The Prosecution of Starvation under the legal framework of Torture

In consideration of the severe infliction of pain and suffering inferred by Starvation, it is not inaccurate to prosecute such conducts as torture.

Article I of the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984) provides the definition of torture as a crime against humanity and its legal requirements.²⁴² Concerning the physical or mental suffering, since it is problematic to estimate the degree of pain needed for a conduct to be judged as torture, under customary international law it is sufficient that the perpetration of the offence is capable of provoking extreme suffering accompanying severe body injuries (*i.e.*, organ failure, serious damages to the body’s functions, death).

Moreover, the Torture Convention does not require that the infliction of pain or suffering must be visible, nor it is necessary that it lasted for a specific period of time.

With regard to the subjective element, Article I of the Convention provides a list of purposes connected to the perpetration of torture, such as: intimidation, confession, obtaining information, or punishment. However, the terminology used for the discipline of Article I underlines that the list of purposes is not exhaustive, providing the opportunity to prosecute other conducts under the framework of torture.²⁴³

An interesting aspect of the Convention of 1984 is that it presents contrasts with the Rome Statute. According to the latter, for the prosecution of torture as a crime against humanity it is not required any particular purpose.²⁴⁴ In addition, in accordance with Article 7 (2)(e) of the ICC’s Statute, torture requires the victim to be under the ‘custody or control of the accused’. This subjective element is not requested, for the prosecution of such crime, by the Torture Convention. In consideration of these elements, it is obvious that Starvation inflicts serious pain and suffering, both mentally and physically.

²⁴² Article I, ‘Torture Convention’: ‘For the purposes of this Convention, the term "torture" means *any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions*’.

²⁴³ In this sense, a relevant example is provided by the ICTY in the Trial Judgement of Prosecutor v. Delalić (1998), para. 162, where it has been affirmed that torture might be inflicted for the purpose of humiliation.

²⁴⁴ Such circumstance has been provided by the ICC, in the case of Prosecutor v Bemba (June 2009), para. 195, where it has been stated that: ‘*it is understood that no specific purpose need be proved for this crime*’.

As for torture, it is expressly required the ‘intention’ of the offence. Therefore, both conducts cannot be committed solely by mere negligence. Doubts of compatibility concern whether the victims were under the custody or control of the accused.

It would not be unreasonable to assume that if the perpetrator has the ability to starve civilians, then it is possible to consider that he or she exerts some amount of control over the civilians, even though having the victim under the accused’s custody is not a mandatory requirement for the crime of Starvation. Thus, it is not incorrect the prosecution of Starvation under the legal framework of Torture, but it must depend on a case-by-case approach, taking into consideration all the relevant circumstances.

2.2.4 Prosecution of Starvation under the legal framework of Killing, Extermination or Persecution

As previously discussed, the qualification of Starvation does not require death as legal assumption. However, the harsh consequences brought by such crime may raise the possibility to prosecute Starvation as murder. In this sense, for the establishment of such crime, the objective element requires the death of the victim. According to Article 3 of the Geneva Convention (1949) and several judgements of the ICTY,²⁴⁵ the victims of murder in the cases of armed conflicts, must not actively participate to the hostilities. Additionally, causation constitutes a crucial requirement, due to the fact that the acts or omissions undertaken by the perpetrator must unequivocally contribute to the victim’s death. The subjective element of murder requires the intention to kill or alternatively, the knowledge and awareness of the accused that his/her actions would reasonably lead to death.²⁴⁶

In line with Article 30 of the Rome Statute, it is required that the accused must deliberately act or omit to kill, acting with the awareness that death would take place in the natural course of events. Due to the absence of death as requirement of Starvation, it is understandable that it does not completely satisfy the assumptions of murder as a crime against humanity. Although both offences share the mental element of intentionality, what is relevant for the prosecution is causation. In particular, it is fundamental to ascertain the nexus between Starvation and death. Thus, if the perpetration of Starvation contributes or directly determines the victim’s death. The solution to this

²⁴⁵ Prosecutor v Dordević, Appeal Judgement (January 2014), para.584; Prosecutor v Mladić, Trial Judgement (22 November 2017), para. 3050.

²⁴⁶ M.J. Ventura, ‘Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities’ (Journal of Criminal Justice,2019).

question depends on evidence and therefore it suggests a case-by-case approach for the prosecution.²⁴⁷

Due to the considerable range of victims involved with the commission of Starvation, such actions may potentially be indicted under the framework of extermination.²⁴⁸ Article 7 of the ICC's Statute includes extermination to the offences qualified as a crime against humanity.²⁴⁹ In particular, this kind of offence is extremely similar to the crime of murder, with the difference that it implies the killing on a 'large scale'.²⁵⁰ Thus, extermination may occur through acts or omissions that result in a massive number of deaths. This involves the activity of subjecting a population to severe conditions that would unavoidably lead to a relevant number of deaths. As murder, it is required the connection between the accused's conduct and the relevant deaths.²⁵¹ Although the large scale constitutes a core requirement for such offence, it has never been settled a specific minimum number of persons to be

²⁴⁷ See SUPRA note 90.

²⁴⁸ The requirements of extermination were also underlined by the Krstic Judgement, in paragraphs 490 -502, available at: <https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e-3.htm>.

²⁴⁹ Article 7 (1): *'For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid'*.

²⁵⁰ In this sense, several judgements share this definition, for instance according to the ICTR in the case 'Prosecutor v Ntakirutimana' (ICTR-96-10-A, 13 December 2014), at para. 515: *'In its Judgement, the Trial Chamber followed the Akayesu Trial Judgement in defining extermination as "a crime which by its very nature is directed against a group of individuals. Extermination differs from murder in that it requires an element of mass destruction, which is not required for murder." The Appeals Chamber agrees with the Trial Chamber that the crime of extermination is the act of killing on a large scale. The expressions "on a large scale" or "large number" do not, however, suggest a numerical minimum. As a crime against humanity, for the purposes of the ICTR Statute, the act of killing must occur within the context of a widespread or systematic attack against the civilian population for national, political, ethnic, racial or religious grounds'*. Similarly, requirements for the crime of extermination were stated by the ICC in occasion of the Al-Bashir First Arrest Warrant Decision (ICC-02/05-01/09-3, 4 March 2009), where the Court established at para. 96: *'the Chamber highlights that, according to the Elements of Crimes, the crime of extermination requires that the relevant killings constitute or take place as part of a mass killing of members of a civilian population, The Chamber observes that this has also been the interpretation adopted by the case law of the ICTY and ICTR'*.

²⁵¹ This principle was highlighted in the case 'Prosecutor v Stakić, ICTY, Appeal Judgement, IT-97-24-A, 26 March 2006), where the Court at para. 260-261 stated: *'The mens rea of extermination clearly requires the intention to kill on a large scale or to systematically subject a large number of people to conditions of living that would lead to their deaths. This intent is a clear reflection of the actus reus of the crime. The Appeals Chamber notes, however, that there is no support in customary international law for the requirement of intent to kill a certain threshold number of victims, as suggested here by the Appellant. This is consistent with the fact that there is no numerical threshold established with respect to the actus reus of extermination, as previously stated by the ICTR Appeals Chamber in Ntakirutimana: "Extermination differs from murder in that it requires an element of mass destruction, which is not required for murder. The Appeals Chamber agrees with the Trial Chamber that the crime of extermination is the act of killing on a large scale. The expressions "on a large scale" or "large number" do not, however, suggest a numerical minimum". Accordingly, the Appeals Chamber is unable to agree with the Appellant's submission that the crime of extermination requires the intent to kill thousands in order to meet the threshold of severity and gravity of the crime'*.

killed.²⁵² What is certainly important is the contextual element, for example it is useful to analyze several factors, such as: the time and location of the murders, the identity of the victims, whether they were selected in consideration of their group or culture, how murders were carried out, etc.

From the perspective of the material element, extermination requires the perpetrator to deliberately determine, with his/her acts or omissions, the murder of a massive number of people. At the same time, the conduct must be undertaken with the awareness that it would lead, in the ordinary course of the events, to death. According to a judgement of the ICTY,²⁵³ it is interesting to underline that to prove extermination, it is not necessarily required for the accused to intend to provoke the murder of a specific number of victims. In order to prosecute Starvation as extermination, what is crucial is that a wide range of deaths were directly or indirectly caused by Starvation. An example of prosecution of Starvation as extermination was given by the Trial Chamber of the Extraordinary Chambers in the Court of Cambodia during the case of Nuon and Khieu, where it has been held that during the forced movement of thousands of civilians, a large scale of people died due to Starvation.²⁵⁴ Yet, the decision was overturned on the appeal trial due to the difficulty to demonstrate the nexus between Starvation and the deaths.²⁵⁵

The denial of food and water may occur towards a targeted group of people, in these cases it is not unreasonable to qualify Starvation as a form of persecution. Persecution may be identified as acts or omissions which deny or violate a fundamental right protected by international treaty or customary law.²⁵⁶ According to the ICC's Statute, to criminalize prosecution, it is necessary that it has been

²⁵² See SUPRA note 95.

²⁵³ Prosecutor v Stakić, Appeal Judgement, SUPRA note 95.

²⁵⁴ Trial Judgement Prosecutor v Nuon and Khieu, Case 002/01 (7 August 2014), para. 521, which states: '*In this weakened condition, the population was forced to march to rural areas during the hottest time of the year and in the almost complete absence of food, water, medical care, accommodation or transportation. Having regard to the totality of the evidence before the Trial Chamber describing the deaths that occurred during the evacuation due to killings, Starvation and exhaustion ...*'; para. 560 which establishes: '*Although it is not possible to determine how many victims resulted from executions as opposed to the severe conditions imposed during the journey, having regard to the totality of the evidence before the Trial Chamber describing the deaths that occurred during the evacuation, the Trial Chamber finds that overall the element of scale required for the crime of extermination is satisfied*'; para 647, stating '*...There is evidence indicating that many died due to Starvation, exhaustion and at the hands of their Khmer Rouge guards during different stages and phases of the transfer. The Chamber therefore considers that the evidence before it of deaths during transfers from southern Cambodia to Battambang and Pursat Provinces (Northwest Zone) is but a representative sample of the total number. The Chamber finds that people died on a massive scale during these movements*'.

²⁵⁵ ECC, Co-Prosecutors v Nuon and Khieu, Case 002/19-09-2007/ECCSC-F36, 23 November 2016), para. 536-537, 546-550, available at: <https://www.legal-tools.org/doc/4888de/pdf/>.

²⁵⁶ Article 7 (2)(g) of the Rome Statute, which states: '*Persecution*" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity'. Definitions of persecutions are provided by the ICTY, for instance in the case of 'Prosecutor v. Krnojelac' (Appeal Judgment, IT-97-25-A, 17 September 2003), the Court stated at para. 185: '*the crime of persecution consists of an act or omission which discriminates in fact and which: denies or infringes upon a fundamental right laid down in international customary or treaty law (the actus reus); and was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the mens rea)*'. Same definition was shared by the ICTR in the case 'Prosecutor v. Nyiramasuhuko' (Appeal Judgment, ICTR-98-42-A, 14 December 2015) and at para. 2138, the Court added: '*the mens rea requirement for persecution as a crime against humanity and, contrary to the Trial Chamber's holding, did not extend*

carried out in connection with the acts provided by Article 7 (1),²⁵⁷ or ‘any crime in within the jurisdiction of the Court’.

Persecution is the only crime against humanity which specifically requires the discriminatory intent.²⁵⁸ In this sense, the victim must be targeted because of his/her membership to a certain group of people, identified by the accused depending on specific grounds (*i.e.*, racial, ethnic, national, political, religious grounds).²⁵⁹ Thus, the perpetrator must act or omit to act with the intent to discriminate a group of people identified on such grounds. The denial or the inadequate provisioning of objects indispensable for the survival of civilians have been categorized as a form of perpetuation of inhuman conditions or treatment.²⁶⁰ The fact that the crime of Starvation has not been specifically considered as an act able to constitute an international crime (unless in the case of war crime), does not exclude the possibility to recognize it as an act of persecution, and more generally as an act against humanity. The opportunity to prosecute Starvation as an act of persecution is connected to the denial of the right of food, which is a fundamental right recognized in both international and domestic law. However, it is essential to underline that according to the ICC, Starvation as a form of persecution cannot be prosecuted alone, it must be persecuted alongside with other crimes or offences that fall within the Court’s jurisdiction.²⁶¹

Issues of application concern the element of discrimination. To punish the accused of persecution, it is necessary to prove the discrimination that drove him to determine Starvation. Thus, the victims

it to include “ethnicity” as an additional discriminatory ground. The Appeals Chamber notes that to support its conclusion that “discrimination on ethnic grounds could constitute persecution if the accompanying violation of rights was sufficiently serious, such as killings, torture and rape”.

²⁵⁷ See SUPRA note 10.

²⁵⁸ In accordance with the ICTY in the case ‘Prosecutor v Blaškić (Appeal Judgement, IT-95-14-A, 29 July 2004), at para. 165, ‘*the mens rea for persecutions is the specific intent to cause injury to a human being because he belongs to a particular community or group*’. Same position was shared by the Tribunal on the Appeal Judgement of Vasiljević (IT-98-32-A, 25 February 2004), at para. 133 it was established that: *persecution is an act or omission which discriminates in fact and which: denies or infringes upon a fundamental right laid down in international customary or treaty law (the actus reus); and was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the mens rea). Although persecution often refers to a series of acts, a single act may be sufficient, as long as this act or omission discriminates in fact and is carried out deliberately with the intention to discriminate on one of the listed grounds*’.

²⁵⁹ In this context in the case ‘CO-Prosecutors v Kaing’ (Appeal Judgement, 001/18/-07-2007-ECCC/SC-F28, 3 February 2003), the Court at 272 stated: ‘*with respect to the interpretation of the discrimination in fact requirement, this Chamber agrees with the Trial Chamber that an act or omission is discriminatory in fact where “a victim is targeted because of the victim’s membership in a group defined by the perpetrator on specific grounds, namely on political, racial or religious basis.” With regard to political grounds specifically, the perpetrator may define the targeted victims based on a subjective assessment as to what group or groups pose a political threat or danger...*’.

²⁶⁰ M.J. Ventura, ‘Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities’ (Journal of Criminal Justice, 2019).

²⁶¹ B. Conley, A. De Waal, ‘The Purposes of Starvation: Historical and Contemporary Uses’ (Journal of International Criminal Justice).

must be chosen depending on their membership to a specific group and such situation must provoke discriminatory consequences towards them.

In consideration of all these elements, the possibility of charging Starvation as an act of persecution recalls a case-by-case application, the crucial element in this sense is the context of persecution. To do so, it is decisive to detect exactly which are the objectives or goals of the perpetrator.

2.2.4 The connection with the Genocide Convention: Prosecuting Starvation as an Act of Genocide

Considering the nature of Mass Starvation and the context in which it generally occurs, it is not unreasonable to frame it, under certain circumstances, as an act of genocide.²⁶²

In accordance with Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (1948),²⁶³ the most distinctive element of this kind of genocide is the specific intent ‘*to destroy, in whole or in part, a national, ethnical, racial or religious group, as such...*’.²⁶⁴ For the qualification of a crime as an act of genocide, there must be the presence of the genocidal intent, therefore the deliberate intent of eliminating a protected group.²⁶⁵

The denial or deprivation of objects indispensable for the survival may be associated with genocide, in consideration of the massive impacts towards the victims. The main issue relates to prove the destructive intent of inflicting famine towards a specific group of people identified on the basis of nationality, ethnicity, race and religion.

There have been some cases, for instance the Karadžić one,²⁶⁶ where it has been proved the infliction of Starvation towards prisoners in detention camps, yet it has been impossible to demonstrate the intention of destructing a particular ethnic group. The case highlights the legal basis by which, even though Starvation is proved, this would not be sufficient for its qualification as an act of genocide,

²⁶² M.J. Ventura, SUPRA note 31.

²⁶³ Convention on the Prevention and Punishment of the Crime of Genocide (1948).

²⁶⁴ Article II of the Convention lists several crimes which fall in under the definition of genocide, such as: ‘*killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group*’.

²⁶⁵ Convention on the Prevention and Punishment of the Crime of Genocide (1948), Article 4(2) ICTY Statute; Article 2(2) ICTR Statute; Article 6 Rome Statute (1998); Article 5 ECCC Law; Article 5 EAC Statute; Article 28B Malabo Protocol (2014).

²⁶⁶ ICTY, Prosecutor v Karadžić (Trial Judgement, IT-95/5/18-T, 24 March 2016).

unless its purpose is to deliberately exterminate a civilian population due to its membership to one of the aforementioned protected groups.²⁶⁷

The difficulty to demonstrate the genocidal intent has been often underlined by the ICTY, by expressing that due to its nature, it is not usually susceptible to direct evidence.²⁶⁸ The statement of the Court suggests that in absence of direct proof, the intent in question may be proven taking into consideration all of the concrete circumstances of the case.²⁶⁹ For instance, Starvation often occurs alongside with an arranged policy involving coordinated acts to provoke famine. While usually an organized plan or policy does not constitute a legal requirement for genocide, its presence may be a useful tool for proving the genocidal intent. Within the legal framework provided by the crime of genocide, it is not irrational to judge that such acts were executed with the genocidal intent.

From the perspective of the International Criminal Court, apart from the core elements established by the Convention of Genocide (1948), the ICC's Elements of Crime provide an additional aspect connected to the commission of genocide. In accordance with Article 6 (4), the crime of genocide occurs when the *'conduct takes place in the context of a manifest pattern of similar conduct directed against the protected group or was conduct that could itself effect such destruction'*.²⁷⁰

For the purpose of prosecuting such conduct as part of genocide, it is necessary that it determines a concrete risk to the existence of the targeted protected group.²⁷¹ To believe that there is the concrete

²⁶⁷ ICTY, Prosecutor v. Karadžić (Trial Judgment, IT-95-5/18-T, 24 March 2016), at para 2584, 2587 the Court states: *'The Chamber recalls that when the same acts are charged under Articles 4(2)(b) and 4(2)(c), a chamber will consider whether these alleged acts amount to conditions calculated to bring about*

physical destruction only when it does not find them to amount to "causing serious bodily or mental harm". The Chamber shall therefore limit its assessment to the acts which are not included above. These include the imposition of inhumane living conditions, forced labour and the failure to provide adequate accommodation, shelter, food, water, medical care or hygienic sanitation facilities'. Furthermore, the Court discussed: *'While the conditions in the detention facilities in the Count 1 Municipalities were dreadful and had serious effects on the detainees, the Chamber is not convinced that the evidence before it demonstrates that they ultimately sought the physical destruction of the Bosnian Muslims and Bosnian Croats. The Chamber is therefore not satisfied for the purpose of Article 4(2)(c) of the Statute that conditions of life calculated to bring about the physical destruction of the Bosnian Muslims and Bosnian Croats were deliberately inflicted on these groups in the Count 1 Municipalities'*.

²⁶⁸ ICTY, Prosecutor v Tolimir, Appeal Judgement, IT-05-88/2-A (2015), para. 246.

²⁶⁹ See SUPRA note 132, para. 246: *'However, by its nature, genocidal intent is not usually susceptible to direct proof. As correctly stated by the Trial Chamber, "in the absence of direct evidence, genocidal intent may be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, the repetition of destructive and discriminatory acts, or the existence of a plan or policy"*.

²⁷⁰ Convention on the Prevention and Punishment of the Crime of Genocide (1948).

²⁷¹ This principle was held by the ICC in the Al Bashir case, in the decision concerning the prosecution's application for a warrant of arrest against Omar Hassan Ahmad Al Bashir (ICC-O2/05-01-/09-3, 4 March 2009; para.124), which stated: *'genocide is only completed when the relevant conduct presents a concrete threat to the existence of the targeted group, or part thereof'*. Therefore, genocide can be solely prosecuted *'when the threat against the existence of the targeted group, or part thereof, becomes concrete and real, as opposed to just being latent or hypothetical'*.

threat of the destruction of the group in whole or in part, it is necessary that Starvation is committed on a large-scale, or that the conduct was carried out in connection with other acts of genocide.²⁷²

In accordance with Article 6, ‘Killing’²⁷³ constitutes the first act that fall within the definition of genocide, in this sense it is required that the accused intentionally provoked the death of members of the protected group. In various trials, it has been held that the legal assumptions for killing are the same of the ones provided by the elements of murder as a war crime and as a crime against humanity.²⁷⁴

Genocide may be inflicted by ‘*causing serious bodily or mental harm*’. This relates to acts or omissions intentionally conducted for the purpose of inducing mental or physical harm to the members of the relevant group. The harm must culminate with serious long-term disadvantage to the victim’s possibility to ‘*live a normal and constructed life*’.²⁷⁵ Such aspect does not require irreversible or permanent damages to the victim, but it highlights the seriousness of the harm as to contribute to the destruction of the group in whole or in part.²⁷⁶ It is essential to underline, as established in the Krstić case, that ‘*the gravity of the suffering must be assessed on a case-by-case basis and with due regard for the particular circumstances*’.²⁷⁷

The criminalization of genocide occurs also in the cases where there are deliberate acts or omissions exposing the protected group to severe life conditions for the purpose of its destruction.²⁷⁸ In these circumstances, like Starvation, it is not required proof of result, therefore evidence linked to deaths

²⁷² The ICC’s Elements of Crime provide at Article 6 several acts that fall within the framework of genocide, such as: Genocide by Killing (Article 6 a), Genocide by Causing seriously Bodily or Mental Harm (Article 6 b), Genocide by Deliberately Inflicting Conditions of Life Calculated to bring about Physical Destruction (Article 6 c), Genocide by Imposing Measures Intended to Prevent Births (Article 6 d), Genocide by Forcibly Transferring Children (Article 6 e)

²⁷³ Convention on the Prevention and Punishment of the Crime of Genocide (1948).

²⁷⁴ ICTY, *Prosecutor v. Karadžić*, Trial Judgment (IT-95-5/18-T, 24 March 2016, para. 542) ; ICTY, *Prosecutor v. Mladić*, Trial Judgment (IT-09-92-, 22 November 2017, para. 3434); ECCC, *Co-Prosecutors v. Nuon and Khieu*, Trial Judgment (Case 002/02, 002/19-09- 2007/ECCC/TC-E465, 16 November 2018, para. 796).

²⁷⁵ It is useful to recall para. 513 of the Krstić’s Trial Judgement (IT-98-33-T, 2 August 2001), where the ICTY stated that: ‘*serious harm need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment or humiliation. It must be harm that results in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life. In subscribing to the above case-law, the Chamber holds that inhuman treatment, torture, rape, sexual abuse and deportation are among the acts which may cause serious bodily or mental injury*’.

²⁷⁶ This concept was shared by the ICTY, in the case ‘Prosecutor v Brdanin’ (Trial Judgement, IT-99-36-T, 1 September 2004), at para 690, “‘*Causing serious bodily or mental harm*” in sub-paragraph (b) is understood to mean, inter alia, acts of torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or serious injury to members of the targeted national, ethnical, racial or religious group. The harm inflicted need not be permanent and irremediable but needs to be serious. The harm must be inflicted intentionally’. Moreover, in the Seromba Appeal Judgement, the ICTR stated: ‘*serious mental harm includes “more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat”*. Indeed, nearly all convictions for the causing of serious bodily or mental harm involve rapes or killings. To support a conviction for genocide, the bodily harm or the mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part’. (Prosecutor v Seromba, Appeal Judgement, ICTR-2001-66-A, 12 March 2008), para 46.

²⁷⁷ See SUPRA note 24.

²⁷⁸ See SUPRA note 111.

or mental or body harm are not mandatory for sustenance of this kind of crime.²⁷⁹ It is crucial from the perspective of prosecution, to take in consideration and inquire on the length of time the victims were exposed to certain life conditions, their membership to a protected group, the nature of the acts held by the perpetrator.²⁸⁰ This category of acts of genocide appears to be the most fitting for Starvation. It is undoubtable that the deprivation of objects indispensable for the survival of civilians, directly exposes them to harsh living conditions causing severe effects on a magnitude.²⁸¹ This position has been supported by the case law of the ICTR, which has often expressed that exposing a protected group to forced diet and inducing circumstances leading to slow death constitute acts of genocide.²⁸² A remarkable example was given during the Trial Judgement of Jean-Paul Akayesu, where the Chamber classified the subjection to a subsistence diet as a form of exposition to serious life conditions for the purpose of destruction, thus as means of genocide.²⁸³ The same position was adopted in occasion of the Trial Judgement of Kayishema and Ruzindana, where the ICTR, despite the deprivation of water and food, included in such crime category, other circumstances that lead to ‘slow death’, such as: ‘*lack of proper housing, clothing, hygiene, medical care or excessive work or physical exertion*’.²⁸⁴ It is essential to bear in mind that for the prosecution all of these circumstances under the umbrella of genocide, the acts must be conducted with the intent of destroying a particular protected group. This core principle was highlighted by the ad hoc Tribunal for former Yugoslavia, in the precedent case of Karadžić, where the Court held that the prosecution of acts inflicting the deprivation of food, water and medical care or the ones creating circumstances provoking slow death, as acts of genocide is possible solely if there is the purpose of destroying in whole or in part a protected group.²⁸⁵ These cases support the belief that Starvation matches perfectly with genocide if

²⁷⁹ This position was expressed in the case ‘Prosecutor v. Popović’ (Trial Judgment, IT-05-88-T, 10 June 2010) at para 814 the ICTY stated: ‘*The methods of destruction covered by Article 4(2)(c) are those seeking a group’s physical or biological destruction. In contrast to the underlying acts in Article 4(2)(a) and (b), which require proof of a result, this provision does not require proof that a result was attained*’.

²⁸⁰ This principle was underlined in occasion of the Karadžić Trial Judgement, where the ICTY at para. 548 stated: ‘*In the absence of direct evidence of whether the conditions of life imposed on the group were deliberately calculated to bring about its physical destruction, a chamber can be guided by the objective probability of these conditions leading to the physical destruction of the group in part.1741 The actual nature of the conditions of life, the length of time that members of the group were subjected to them, and the characteristics of the group such as its vulnerability are illustrative factors to be considered in evaluating the criterion of probability*’.

²⁸¹ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: ‘Accountability for Mass Starvation: Testing the Limits of the Law’ (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022); M.J Ventura, See SUPRA note 31.

²⁸² ICTR, Prosecutor v. Akayesu (Trial Judgment, ICTR-96-4-T, 2 September 1998) para. 506; ICTR, Prosecutor v. Kayishema and Ruzindana (Trial Judgment, ICTR-95-1-T, 21 May 1999), para. 115; ICTR, Prosecutor v. Musema (Trial Judgment, ICTR-96-13-A, 27 January 2000), para. 157.

²⁸³ More specifically, on para. 506, the Chamber stated: ‘*the means of deliberate inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or part, include, inter alia, subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement*’ (Prosecutor v Akayesu, ICTR-96-4-T, 2 September 1998).

²⁸⁴ Prosecutor v Kayishema and Ruzindana (Trial Judgement, ICTR-95-1-T, 21 May 1999), para. 115.

²⁸⁵ Prosecutor v Karadžić, Trial Judgement (IT-95-5/18-T, 24 March 2016), para. 547.

it is considered as a deliberately infliction of conditions of life calculated to bring about physical destruction in whole or in part.

2.3 The significance of the ‘Right to Food’

The right to food is an inclusive human right recognized by domestic and international law. It is the right to have access to all the nutrients that an individual necessitates to live a healthy and active life. In particular, it can be defined as the right to have regular, permanent and free access, to quantitatively and qualitatively adequate and sufficient food, ensuring a dignified life.²⁸⁶ In accordance with the statement of the Committee on Economic, Social and Cultural Rights, the right to adequate food is achieved when every individual has the physical and economic access to adequate food or ‘*means for its procurement*’.²⁸⁷ The right to food lays on three essential grounds, it must be *available, accessible* and *adequate*. The first element relates to the requirement that food should be available from nature or through its production (*i.e.*, farming, fishing, herding), it also relates to its availability in food markets and shops. People might think that undernourishment and malnutrition because the food is not sufficient for the whole population. Actually, according to the Food and Agriculture Organization (FAO), the world’s production is enough to feed everyone. Instead, the leading cause of such inconveniences is to find in the lack of access to available food. To avoid this circumstance, countries should make crucial efforts to guarantee a sustainable food production to secure its availability. The concept of accessibility regards the requirement of guaranteeing appropriate economic and physical access to food.²⁸⁸ This means that people should be capable to afford an adequate amount of food without prejudicing any other basic need. The requirement of accessibility may be granted, for instance, by ensuring that the minimum salaries are enough to grant access to the prices of food and other basic needs, or by improving infrastructures (*i.e.*, markets and public transports for the people who live in remote areas). On the other hand, this does not imply that government must distribute free food to everyone, the right to food is not equivalent to the right to be fed, instead it refers to the right to feed ourselves with dignity. Thus, States should rather arrange an environment allowing people to procure adequate amounts of food for their needs.²⁸⁹ The third ground concerns the right to have adequate food, it implies that individuals must have access to a certain qualitative and

²⁸⁶ UN Special Rapporteur on the right to food, OHCHR Fact Sheet No. 27.

²⁸⁷ UN Office of the High Commission for Human Rights (OHCHR) Fact Sheet No. 16: ‘The Committee on Economic, Social and Cultural Rights’

²⁸⁸ ‘The Right to Food and Access to Natural Resources’ (iied, FAO), available at: <https://www.iied.org/sites/default/files/pdfs/migrate/G03065.pdf>.

²⁸⁹ UN Human Rights Office to the High Commissioner, ‘International Standards: Special Rapporteur on the Right to Food’, available at: <https://www.ohchr.org/en/special-procedures/sr-food/international-standards>.

quantitative standard of food in accordance with their needs. About this concept, it is relevant to underline that food should be generally safe for consumption and free from unhealthy substances (*i.e.*, contaminants deriving from farming industrial processes, such as pesticides, chemicals, hormones).²⁹⁰

The right to food is disciplined by Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁹¹ which entails two distinct rights: the right to adequate food (mentioned in the Covenant's Paragraph I)²⁹² and the right to be free from hunger (Covenant's Paragraph II).²⁹³ Despite the already discussed right to adequate food, the right of freedom from hunger, which is closely connected to the right to life, requires the State parties to guarantee to its population at least the minimum nutritional intake indispensable for survival. It represents the fundamental ground for the exercise of the other human rights. For the protection and respect of such right, Article 11 lists several activities or duties that the member States shall perform, individually or through the cooperation with other countries, such as:

- Improving methods of production, conservation and distribution of food,
- Developing and reforming agrarian systems to achieve the most efficient usage of natural resource,
- Equitably ensure the distribution of world food supplies in consideration of the need.²⁹⁴

Regardless the aforementioned legislations, the right to food is indirectly recognized by the regulation of other rights. For example, according to the African Commission on People's Rights (1981), the

²⁹⁰ OHCHR, 'The Right to Adequate Food', Fact Sheet No.34 (2010).

²⁹¹ Multilateral Treaty adopted by the UN's General Assembly on 16 December 1966, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>. Beside the Covenant, the right to food is protected and recognized by several international and regional human rights treaties, such as: Article 15 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003); the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the so-called *Protocol of San Salvador*, 1988); the African Charter on the Rights and Welfare of the Child (1990); the Convention on the Elimination of All forms of Discrimination against Women (1979); the Convention on the Rights of the Child (1989) and the Convention on the Rights of Persons with Disabilities (2006).

²⁹² Article 11 (I): '*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent*'.

²⁹³ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), pages 132 - 134

²⁹⁴ International Covenant on Economic, Social and Cultural Rights, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

rights to life, the right to health, economic, social, and cultural development all implicitly protect the right to food under the African Charter on Human and People's Rights.²⁹⁵

In the context of armed conflicts, the protection of the right to food is provided by the International Humanitarian Law with the establishment of the Geneva Conventions, aiming at guaranteeing the access of civilians and prisoners of war to food and water, and avoiding the deliberate infliction of famine through the legal prohibition of Starvation as a method of warfare. For the implementation of such right and for the prevention of possible violations, soft-law instruments (*i.e.*, recommendations, guidelines and resolutions) are highly considered by the international arena. In this sense, it is relevant to mention the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,²⁹⁶ adopted by the FAO in 2004. As a soft-law instrument, these guidelines are not legally binding, but they are useful for guiding the States on implementing their obligations referring to the right to food. Moreover, the guidelines assist Governments to arrange environments that may guarantee adequate and accessible food sustenance. To do so, the Food Guidelines encourage the cooperation of States with non-governmental and international organizations for an effective promotion and recognition of the right. In this context, the UN's General Assembly and the Human Rights Council requested international organizations to make efforts on the promotion of projects and policies having positive impacts on food,²⁹⁷ aiming at avoiding activities or practices by States or private entities implying food insecurity.²⁹⁸

2.3.1 State Obligations

The right to food imposes three legal obligations for the state parties: the obligation to *respect*, to *protect* and to *fulfil*.²⁹⁹ The obligation to respect relates to the responsibility for States to refrain from taking any actions that may restrict people's access to adequate food, such as damaging food and water supplies or infrastructures functional for their production or distribution.³⁰⁰ Thus, it is implicit that States must have the duty to hold themselves back from any policy or activity that could

²⁹⁵ The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria, Communication No. 155/96, para. 64.

²⁹⁶ Also known as 'Food Guidelines'

²⁹⁷ For example, FAO (organization which mostly supports and protects the realization of the right to food) and the United Nations Children's Fund (which contributes and protects the children's right to food).

²⁹⁸ General Assembly Resolutions NO. 60/165 and NO. 61/163; Human Rights Council Resolutions NO. 7/14 and 10/12.

²⁹⁹ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), page 134 – 135; UN Special Report on the Right to Food, UN Doc. E/CN.4/Sub.2/1987/23 (7July 1987), available at: <https://digitallibrary.un.org/record/139080>.

³⁰⁰ General Comment NO. 12: 'The right to adequate food' (UN Doc. E/C.12/1999/5, 12 May 1999).

determine Starvation. In addition, to avoid Starvation and to secure their effective respect of the right to food, States should periodically review their national programmes and legislations. To do so, they shall also formulate mechanisms providing legal remedies for possible breaches. It could be useful for the protection of the right, the establishment of institutional practices enabling the coordination of different social and economic sectors for the complete realization of the right.

The violation of the right to food may occur even in the circumstance where a State does not adequately control the actions of third or private parties that impede the population to have appropriate access to enough food. With the obligation of protection, States are required to prevent human rights breaches committed by third or private parties (*i.e.*, armed groups, businesses, companies) and to ensure accountability and punishment in the cases where preventative measures fail. With reference to the Maastricht Guidelines,³⁰¹ States are liable for violations of the ESCR that arise from their failure to efficiently control and prevent the non-state actor's conducts. An emblematic example of a breach of the duty of protection is given by Sudan's passivity towards the extensive destruction committed by the Janjaweed insurgents in Darfur since 2003, which resulted in a harsh food crisis among the civilian population.³⁰²

When armed conflicts occur, usually States do not have a complete control over their territory. For instance, during military actions or occupations, part of the control might be exercised by a foreign state or by armed non-state actors. This situation does not constitute an exemption for the States of respecting their obligations within their territory. However, this is particularly complexed because actions conducted by a state without power or control over a region are unlikely to be successful. At last, the obligation to protect demands States to ensure the safety of the food in markets. This requires States to enact food related safety standards depending on the quality of food, providing fair market practices. The obligation to fulfil the right to food entails the obligations of facilitating, promoting and providing. In particular, it requests the states to facilitate and not to impede the population's access to food. This might be possible with the strengthening of the people's access to resources and food supplies, by improving the infrastructure or by implementing laws that may assist people who are not able of feeding themselves adequately. Unlike, the other two obligations, the fulfilment of such requirement entails the establishment of long-term measures. Furthermore, it is essential to mention that States have the obligation of providing direct access to food when the population is

³⁰¹ Instrument of soft law adopted in 1997 issued as UN Document E/C.12/2000/13 by the Committee on Economic, Social and Cultural Rights (CESCR). It is useful to underline that the CESCR plays an important role concerning the implementation and the recognition of the right to food. Specifically, it essentially exercises monitoring functions.

³⁰² Report of the International Commission of Inquiry on Darfur to the UN Secretary-General (25 January 2005), available at: <https://www.un.org/ruleoflaw/blog/document/report-of-the-international-commission-of-inquiry-on-darfur-to-the-united-nations-secretary-general/>.

unable to feed itself due to circumstances beyond their control. The most common examples are represented by war and natural disasters. Armed conflicts often enable the impossibility to have access to food, causing malnutrition and famine. It is implicit, that in these circumstances the State must directly assure humanitarian aid to the population.³⁰³

Additionally, to fulfil completely their obligations, States shall also respect and support the fulfilment of the right to food of populations belonging to other countries. Hence, they must ensure that their citizens (both natural and legal entities) refrain from committing any violation of the right also in foreign countries. At the same time, in compliance with numerous legal instruments, State parties must take measures, including international cooperation and coordination, to guarantee an impartial distribution of world food supplies.³⁰⁴ This kind of cooperation is vital for avoiding famine and malnutrition, when States are unable, on their own, to protect and respect the correct realization of the right to food. Every State must respect the general obligation with immediate effect of non-discrimination. In accordance with the principle of equality, this prohibition relates to the forbiddance of allowing food and water access on the basis of race, sex, religion, ethnicity, nationality or other status. On the contrary, States to fight discrimination shall adopt positive measures (*i.e.*, temporary special measures) which provide special treatments for specific individuals, particularly the ones most marginalized, the ones who are in a position of disadvantage or the ones who have different nutrition needs (*i.e.*, due to their cultural or religious beliefs). This form of aid shall persist until the discrimination have ended. An example of such measures may be the provision of basic resources to the marginalized people to improve their capability of achieving food security by adequate means.³⁰⁵ According to the CESCR, in case of failure of fulfilling its obligations, or when States adopt ‘retrogressive steps’, the responsibility to prove the breach relies on the State involved. In particular, as previously mentioned, that State must show that such conduct was justified by particular circumstances that must be accepted by the Committee. If the States fails to prove that it was incapable of fulfilling its duties and obligations, the CESCR considers it as an unwillingness to perform its obligations. Apart from States, international accountability is also recognized to the private sectors (*i.e.*, transnational corporations) for the respect of human rights, including the rights related to food. It is generally acknowledged that the activities of business operating in the private sector have a considerable impact towards the enjoyment of the right to food.

³⁰³ UN General Comment NO. 12.

³⁰⁴ Article 11 (2) of the International Covenant on Economic, Social and Cultural Rights; Articles 1(3), 55 and 56 of the Charter of the United Nations; Article 22 and 23 of the Universal Declaration of Human Rights; Articles 4, 24 and 27 on the Rights of the Child; Rome Declaration of the World Food Summit

³⁰⁵ OHCHR, ‘The Right to Adequate Food’, Fact Sheet No.34 (2010), page 20 -21.

The role of the private sector is significant considering that most food is produced, processed and distributed across the world by private entities. At the same time, it is necessary monitoring and regulating their activities due to the fact that many corporations negatively affect the individual's rights to food, by polluting and contaminating the environment, causing severe harms to food stability. About this topic the United Nations expressed itself with the General Assembly's Special Report on the right to food. According to the document, transnational corporations are required, during the practice of all their activities, to respect at least the right to food and avoid its violation.³⁰⁶

2.3.2 Restrictions of the Right to Food during Armed Conflicts

It is generally accepted that the International Human Rights Law (IHRL) must be applied and observed during war and occupations. According to limitation provisions in the IHRL, States are allowed to restrict the application of several rights for the safeguard of public health, public security and for the protection of other fundamental rights.³⁰⁷ Unlike several international treaties concerning human rights, the International Covenant on Economic, Social and Cultural Rights does not provide any specific derogation clause regarding the right to food (*i.e.*, not even temporary suspensions in situations of public crisis). However, this does not preclude the possibility to limit the right to food in certain occasions.

The ICESCR contains a provision offering the opportunity for member States to arrange limitations to the free exercise of its rights and freedoms, as '*determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society*'.³⁰⁸ Notwithstanding the content of the provision, according to the UN, Article 4 must not be interpreted as a permission for States to restrict the rights concerning the subsistence or the survival of the individual (thus, the right to food).³⁰⁹ This means that the right to food, and in particular the freedom from hunger, must not be subjected to limitations. In support of this principle,

³⁰⁶ UN General Assembly, A/59/385 para 24: '*The Special Rapporteur urges the Caterpillar corporation, and all other corporations, to commit to undertake responsibility to promote the effective realization of the right to food through, at the very least, avoiding complicity with actions that amount to a violation of the obligation to respect the right to food*', available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/525/17/PDF/N0452517.pdf?OpenElement>.

³⁰⁷ The Covid-19, for instance, has challenged most of all the States in restricting rights (*i.e.*, the freedom of movement), for the protection of the public health and security.

³⁰⁸ Article 4 International Covenant on Economic, Social and Cultural Rights.

³⁰⁹ This principle has been held in the so-called Limburg Principles on the Implementation of the ICESCR, UN Doc. E/CN.4/1987/17 (January 1987). Similar principle is shared by Article 4 (2) of the ICESCR which states: '*No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent*'.

Article 11 (2) of the CESCR, precises that States have the crucial obligation to perform all the necessary actions to lessen and mitigate hunger, even in the cases of natural or other disasters.³¹⁰

On the other hand, despite the legal impossibility to restrict the freedom from hunger, the right to adequate food can be restricted, but the party involved must justify the reasons of such conduct. Moreover, the restriction to be justified, must certainly respect the principles of *proportionality*, *legality* and *legitimacy* in relation to the concrete circumstances.³¹¹

An interesting aspect concerning the situations when the right to food might be restricted is represented by the concept of the *force majeure*. It may be defined as the happening of an unpredictable event that prescinds from the control of the State, and it makes impossible for the latter to perform its obligations.³¹² In consideration of the Vienna Conventions on the Law of Treaties (1969),³¹³ it is legitimate to believe that in the cases of force majeure, a state's action or omission does not constitute a breach of the ICESCR. It is vital to mention that this principle does not reflect on armed conflicts, in those cases, in fact, human rights shall be always respected and protected. The only case where the exemption due force majeure could apply, relates to the circumstances where offences and attacks are totally unforeseeable, and the state is not capable of ensuring the observance of human rights.³¹⁴

2.3.3 The Liability of the Perpetrators

The respect and observance of the State parties of the ICESCR's obligations is monitored through a reporting system. States are obliged to report information to the Committee on Economic, Social and Cultural Rights (CESCR) regarding the measures adopted, the improvements accomplished, and the possible difficulties related to the national implementation.³¹⁵ Once received, the CESCR examines

³¹⁰ Article 11 (2) CESCR.

³¹¹ OHCHR, 'The Right to Adequate Food', Fact Sheet No.34 (2010).

³¹² A clear definition is provided by Article 23 the so-called 'International Law Commission Articles' (ILC), which defines it as '*the occurrence of an irresistible force or of an unforeseen event, beyond the control of the state, making it materially impossible in the circumstance to perform the obligation*'.

³¹³ Article 61(I) of the Vienna Conventions on the Law of Treaties (1969) states: '*A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty*'.

³¹⁴ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), pages 140 -141.

³¹⁵ Article 16 (I) ICESCR: '*The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted, and the progress made in achieving the observance of the rights recognized herein*'.

the State's reports and analyzes if the measures are adopted in compliance with the ICESCR. On the basis of the States' reports the Committee adopts the so-called 'Concluding Observations'.³¹⁶

As an instrument of soft law, these observations result as not legally-binding, but when a violation of the ICESCR is detected, the State involved shall implement within a period of six months the Committee's recommendations. Breaches and violations of the laws established by the CDESCR may be reported even by other State parties or individuals, this brings to an inquiry procedure where the Committee verifies if the complaints are founded. Depending on the findings, the CDESCR sends confidentially the results to party involved together with comments and recommendations.³¹⁷

Although many States are not completely convinced of the effectiveness of this legal framework, it might strengthen the protection and the compliance of the States with the ICESCR. This represents an important step forward for enhancing the awareness of the importance of protecting and guaranteeing core rights, such as the right to food. In 2015, the General Assembly adopted the '2030 Agenda for Sustainable Development'(SDG), which has been signed by 193 countries. The goal of the Agenda is to promote sustainable food production, accomplish food security, and end hunger by 2030. The reference to the term 'goals' highlights that the SDG's objectives result to be not legally binding obligations. The main issues related to the goals pursued by the SDG concern the activities of monitoring the effective progresses of Members States. Even though the United Nations introduced indicators for the measurement of food instability (*i.e.*, the IPC scale), it is challenging to control the corresponding commitments of the State parties. To avoid that States may take advantage of this circumstance, they should implement SDG in a way that results consistent with their liability to respect the provisions of the ESCR. In this sense, a solution the introduction may be represented by the introduction of periodic review processes or more stringent mechanisms of control.

For the fight against hunger and the protection of the right to food, the relationship between International Human Rights Law, International Humanitarian Law and International Criminal Law (ICL) represents an effective tool. Notwithstanding the fact that these three branches of law operate in distinct areas, they are complementary and mutually reinforcing. For instance, the effective interpretation and application of the ICL often depends on an accurate interpretation of the legal framework employed in the IHRL and IHL.

³¹⁶ CDESCR 'Overview of the present working methods of the Committee', available at: <https://www.ohchr.org/en/treaty-bodies/cescr/rules-procedure-and-working-methods>.

³¹⁷ Article 11 'Inquiry Procedure' of the Optional Protocol to the CDESCR, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-economic-social-and>.

In the context of armed conflicts, the Human Rights Law and the Humanitarian one can be applied together to ensure that civilians have access to objects indispensable for their survival. This link is crucial for avoiding numerous deaths provoked by undernourishment or diseases generated by hostilities. In this sense, the IHL is essential for the regulation of the methods that can and cannot be conducted during warfare, while the IHRL represents the major instrument for guaranteeing the respect of the individual's fundamental rights. The relationship is important also from a procedural perspective, the fact that these two branches of law are complementary to each other enforces the scopes of liability. In fact, unlike the IHL's framework, the IHRL provides a wide regime of accountability and enforcement system. It is useful to underline, that since the IHL solely applies in the circumstances of war and armed conflicts, Starvation occurring in different cases is legally covered by the IHRL. If committed intentionally, serious violations of both International Humanitarian Law and International Human Rights Law imply criminal liability. Equivalent procedure is provided for gross violations of the ESCR. For example, if the perpetrator is a State committing violations of economic, social or cultural rights protected under the treaty, it can constitute an international crime. The same perspective extends also in the events where the State is responsible for not preventing and criminalizing violations of such rights, committed by non-state actors.

Unlike the IHLR (which mostly relies on the States' obligations and duties), the International Criminal Law principally concentrates on the individual, needing to demonstrate its innocence or guilt. To do so, the focus of the ICL lies on the mental element of the accused. Since Human Rights' Conventions are ratified and concluded by States, for the determination of criminal responsibility it is necessary to analyze the State's conduct. In these cases, for the imputation of criminal conducts, it is fundamental to highlight that only intentional unlawful acts can be attributed to a State, while it is not possible to do same for the elements of the *mens rea*.³¹⁸

In contrast to the ICL, the IHRL does not require the demonstration of an intent or an analysis of the factors that might lead to a potential infringement. However, it is crucial to ascertain whether a state is incapable or unwilling to prevent Starvation in order to assess whether an IHRL violation has occurred and to identify solutions to the issue. It must be assessed whether the State's inability to feed its own population or a lack of political commitment to uphold the right to food contributed to hunger. The state may limit the enjoyment of the right to enough food only for the purpose of 'promoting the general welfare in a democratic society'.³¹⁹ Hence, to address the issue, it is essential to trace a

³¹⁸ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), page 149 – 151.

³¹⁹ Art 4 of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights: 'The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State

distinction between the State's inability and its unwillingness. A core aspect of the IHRL is that it places the burden of proof on the state to demonstrate its incapacity, including the demonstration that all reasonable efforts have been made to seek international assistance. As previously discussed, failure to demonstrate such circumstances would suggest unwillingness, and would be in breach of the ICESCR. As IHRL, ICL also serves a protective role indirectly by preventing new crimes and reiterating the significance of the normative values preserved. However, international criminal justice (ICL) only intervenes when IHL and IHRL's protections have previously failed to stop the population from being deliberately starved. This is because international criminal justice reflects a failure of IHL and IHRL's system of protection.³²⁰ Having said that, it is undoubtful that the ICL can be practiced for the prosecutions of the ESCR's infractions.

2.4 Sanctions for Starvation Crimes

Sanctions are a form of non-violent coercive measures that allows the sender to temporarily impose limits on the recipient.³²¹ The UN, the US, western European countries, and the European Union (UN) are the most common senders of sanctions in today's world, with the US being by far the most active sender.³²² The targets of these measures may be both natural persons and entities. Thus, this includes states, non-state entities (*i.e.*, armed groups, corporates), government leaders, terrorist organizations or those directly involved in terrorist activity.³²³

Sanctions can be classified into five specific categories:

- a.) Political entities and governments may be subjected to Diplomatic Sanctions, which include limitations on their operations such as closure of embassies and other offices of representation, bans on their travel or numbers of diplomatic workers, and other limits on visa policies.³²⁴
- b.) With the infliction of Individual Sanctions, travel restrictions and asset freezes are imposed on both natural persons and corporate entities.

in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'

³²⁰ E. Schmid: 'War Crimes Related to Violations of Economic, Social and Cultural Rights' (71 Heidelberg Journal of International Law, 2011) pages 530 -540.

³²¹ D. Cortright, G. Lopez, 'The Sanctions Decade: Assessing UN Strategies in the 1990's' (Lynne Rienner Publishers, 2000); ICRC, 'Sanctions: How does law protect the war?', available at: https://casebook.icrc.org/a_to_z/glossary/sanctions.

³²² J. Gordon, 'The Hidden Power of the New Economic Sanctions', (118 Current History, 2019), pages 3-10

³²³ T. Biersteker, 'UN Targeted Sanction Datasets, 1991-2013' (55 Journal of Peace Research, 2018).

³²⁴ For instance, following the Russian annexation of Crimea, the EU imposed against 1473 individuals (including President Putin, the Minister for Russia's Foreign Affairs Lavrov, businessmen and oligarchs) economic sanctions and visa measures. The sanctions included travel bans and asset freezes. (Source: European Council of the European Union; 'Guide to the EU Sanctions against Russia', Van Bael & Bellis).

- c.) The Sectoral sanctions, that may include restrictions on the production of weaponry, of the use of materials or technologies that could lead to nuclear proliferation and limitations that apply to both land and nautical activities.³²⁵
- d.) The so-called Commodity Sanctions concerning restrictions or prohibition of the trade of commodities and certain resources, for example oil, coal, diamonds, gas, timber, luxury goods, etc.³²⁶
- e.) At last, senders may inflict the Financial Sector sanctions, which include restrictions to investments, to financial funds, or limitations on the interaction with specific financial markets.³²⁷

One prevalent misconception is that sanctions are solely to punish certain misconducts. Actually, sanctions may be also undertaken to alter the target's behavior, weaken, constrict, or distract adversaries, aid allies, and dissuade actors who are not parties to the sanctions (as a form of deterrence). Moreover, additional objectives related to the promotion of democracy and of several human rights can be achieved with the infliction of sanctions, such as: end human rights infringements, peace enforcement, guarantee compliance with international treaty and customary law, prevent armed hostilities, restrict the spread of weaponry. Sanctions can be inflicted simultaneously by different senders.³²⁸ At last, while investigations of criminal prosecutions are underway, Sanctions could be further used as a temporary punitive and preventive instrument.

One of the factors that makes sanctions an appealing tool for policymaking is that they allow the infliction of measures, without precisely defining the legal system under which the violations have been committed and without requiring the same level of criminal evidence that would be necessary in court proceedings.³²⁹ An example, of such circumstance is the case of the Sudanese army leader Paul Malong, who was sanctioned by the European Union for the commitment of numerous human

³²⁵ For instance, in relation to the War in Ukraine, on 3 June 2022, the European Union adopted the Council Regulation No. 2022/879 which prohibits the export, trade, supplying or transferring several goods and services to Russia (*i.e.*, auditing, tax consulting, business consulting, radioactive elements or products containing them, basic organic chemicals, radioactive elements, hydrocarbons, fertilizers, pharmaceutical products).

³²⁶ For instance, the United Nations Security Council impose international sanctions on Iraq in accordance with Chapter VII of the United Nations Charter, with the adoption of Resolution No. 661 (6 August 1990). The resolution reaffirmed the conditions required by Resolution No. 660 adopted in the same year, highlighting Iraq's refusal to comply with it, and recognizing Kuwait's right to self-defense. According to para. 4 of the Resolution, states should prevent: the import of goods and resources from Iraq or Kuwait, the transfer of funds or of financial resources; the sale of weaponry or military equipment.

³²⁷ B.J. Spatz, 'Sanctions in the Political Market (Conflict Research Programme, London School of Economics and Political Science, 2019), available at: <https://www.lse.ac.uk/ideas/Assets/Documents/Conflict-Research-Programme/crp-memos/Sanctions-Memo-261119.pdf>.

³²⁸ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), pages 318-320.

³²⁹ M. Eriksson, 'Targeting Peace: Understanding UN and EU Targeted Sanctions (Farnham: Absgate, 2011).

executions and severe human rights violations. The sanctions mainly concerned freezing assets in the EU and the prohibition of travelling within the EU borders.³³⁰

The infliction of sanctions necessitates a complete knowledge of the context and the targets. Even the most proficient state intelligence services have difficulty accessing and interpreting such data. However, the United Nations provided a fair solution to this issue, with the institution of standardized mechanisms of panels of experts. In addition to any sanction adopted, those panels have the significant role of collecting and distributing information regarding the subject under examination, creating transparency and improving knowledge.³³¹ Any kind of accountability requires the recording of crimes. In order to support political analysis or other accountability measures, such as those related to crimes concerning Starvation, panels arrange high quality and openly accessible data about ongoing sanctions situations.³³²

Sanctions can constitute an essential tool for ensuring and enhancing criminal responsibility for Starvation. The reputational repercussions of being listed as a target of sanctions by the UN or a nation, as well as measures like asset freezes or restrictions related to travelling, represent a form of holding liability. A valuable factor deriving from the use of sanctions regards the collection of information and data (*i.e.*, the UN's panel of experts). Indeed, it might be crucially beneficial for the provision of essential background data for criminal prosecution. Moreover, they could be used in conjunction with other transitional justice strategies like restitution and compensation, or to pressure nations or entities to comply with international courts.³³³

On the other hand, sanctions may provoke unpleasant outcomes. One of the worst effects of broad sanctions is the restriction of legal economic activity, hence this can guide to the shifting of trade into illegal activities, permitting criminals and criminal organizations to strengthen themselves at the expense of the individuals engaged in legal trade. However, by using targeted sanctions and related financial measures against specific people and organizations, especially those engaged in corrupt actions, the likelihood of this is decreased.³³⁴ Nevertheless, it is likely that all forms of coercion will

³³⁰ 'EU imposes sanctions on South Sudanese army general' (Sudan Tribune, 23 March 2021), available at: <https://sudantribune.com/article67449/>.

³³¹ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC, see SUPRA note 3 pages 337-339; T. Biersteker, R. Brubaker, D. Lanz, 'UN Sanctions and Mediation: Establishing Evidence to Inform Practice' (United Nations University Centre for Policy Research, February 2019), available at: https://collections.unu.edu/eserv/UNU:7257/UN_Sanctions_and_Mediation_WEB_FINAL.pdf.

³³² For a complete view on the ongoing sanctions adopted by the UN, see the UN Security Council's site, available at: <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>.

³³³ D. W. Drezner, 'Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice' (13 International Studies Review, 2011).

³³⁴ L. Jones, 'Societies Under Siege: Exploring How International Economic Sanctions (Do Not) Work' (Oxford: Oxford University Press, 2015).

have unexpected humanitarian effects. Due to the disastrous results that these measures had towards Haiti and Iraq's population, senders have adjusted the sanctions' mechanisms for the purpose of lessening the chances of depriving civilians of objects indispensable for their survival.³³⁵ However, this does not exclude that in future possible harsh side effects might happen.

2.4.1 Scope and Jurisdiction of the Sanction Programs

Sanctions can represent a valuable tool, for the prevention and punishment of Starvation crimes. Besides the UN's Sanction. Program, during the last decade, several countries adopted Sanction Programmes for the protection of fundamental rights, with the purpose of avoiding gross violations of IHL and IHRL. In this sense, significant efforts were made by the US, the UK and the European Union.³³⁶

The United Nations' sanctions certainly represent a significant weapon to fight Starvation and related crimes. Their significance relies on the fact that they are legally binding for all the UN's member states. In accordance with Article 41 of the UN Charter's Chapter VIII,³³⁷ the Security Council (UNSC) has the authority to impose sanctions in response to threats to international peace, security and acts of aggression³³⁸. Specifically, these sanctions may consist of interruption of economic and diplomatic relations. In conjunction with Article 41, under Article 25³³⁹ all members are required to concur with and implement Security Council decisions.³⁴⁰ In more detail, Chapter VII's Article 39 specifies that the Security Council is responsible for determining whether there is a threat to

³³⁵ A. Alnasrawi, 'Iraq: Economic Sanctions and Consequences, 1999-2000' (13 International Studies Review, 2011); R. Garfield, 'Morbidity and Mortality Among Iraqi Children from 1990 through 1998' (March 1999), available at: <https://reliefweb.int/report/iraq/morbidity-and-mortality-among-iraqi-children-1990-through-1998-assessing-impact-gulf-war>.

³³⁶ 'The Domestic Political Cost of Economic Sanctions' (52 The Journal of Conflict Resolution, 2008), S.H. Allen, page 915-17.

³³⁷ Chapter VIII of the UN's Charter concerns 'Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression'. The function of imposing sanctions is the Security Council is also underlined by Article 39, which establishes that: *'The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security'*.

³³⁸ Article 41 states: *'The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations'*.

³³⁹ Article 25 states: *'The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'*.

³⁴⁰ Article 41; Article 25, United Nations Charter, available at: <https://www.un.org/en/about-us/un-charter/full-text>.

international peace and security or an act of aggression and for recommending or deciding what steps should be taken to maintain or restore that peace and security.³⁴¹

The UN Charter does not provide any technical standard regulating the determination of sanctions. However, Chapter VIII of the UN Charter requires the unanimous consensus of 5 Permanent Member States (China, UK, USA, France, Russia) for the imposition of political or economic measures. The 5 Member States may also absent to the decisions, without resulting as a form of veto.³⁴²

To strengthen its capacity to impose and carry out sanctions effectively, the UN has created a substantial political, administrative, and technical mechanism. Each UNSC sanctions regime is monitored by a sanctions committee made up of the fifteen UNSC member states, presided over by a non-permanent member of UN's Security Council, with assistance from officials from the Security Council Affairs Division of the Department of Political and Peacebuilding Affairs. Apart from information that might be obtained by the diplomatic corps and intelligence services of individual member states, committees as such lack the technical capacity to collect data on the sanctions they regulate.³⁴³ However, in practice, States are frequently hesitant to reveal the information obtained by their intelligence, and even when they do so, other UNSC members may doubt the accuracy of the information and the member states' political reasons.³⁴⁴

As a result, the Security Council normally requests that the Secretary-General set up a panel, known as a UN Panel of Experts, for the purpose of monitoring and supervising the sanction regime and its related issues. The tasks of the Panel are normally determined by the UN's resolutions,³⁴⁵ and often coincides with the objective of analyzing conflict and providing recommendations for their solution.³⁴⁶ Thus, the Experts of Panel represent a valuable tool for the collection and analysis of impartial data and evidence related to international crimes and violations of humanitarian rights. At the moment, the UN established thirteen sanction regimes, seven of which are assisted by Panels of humanitarian Experts.³⁴⁷ In some of the aforementioned cases, the Panels often focus their reports

³⁴¹ Article 39, Chapter VII UN Charter.

³⁴² 'Voting System', UN Security Council, available at: '<https://www.un.org/securitycouncil/content/voting-system>'.

³⁴³ J. Gordon, 'The Hidden Power of the New Economic Sanctions' (Current History, 2019).

³⁴⁴ A.J. Boucher, 'UN Panels of Experts and UN Peace Operations: Exploiting Synergies for Peacebuilding' (Washington, DC: The Henry L. Stimson Center, 2010).

³⁴⁵ For instance, the Security Council's Resolution NO. 2140 (2014), which imposed sanctions for a period of one year for the crimes committed in Yemen and established a Panel of Experts. Furthermore, another example is provided by the Resolution NO. 2216 (2015) which, apart from increasing the number of Experts of the Panel; imposed travel bans, an embargo and assets freeze towards Yemen.

³⁴⁶ A.J. Boucher, V.K. Holt, 'Targeting Spoilers: The Role of the United Nations Panels of Experts' (Washington, DC: The Henry L. Stimson Center, 2010).

³⁴⁷ For instance Yemen, Somalia, Democratic Republic of Congo, Central African Republic, Mali, Sudan and South Sudan. (Source: 'Sanctions', United Nations Security Council, available at: <https://www.un.org/securitycouncil/sanctions/information>).

and activities on humanitarian access related issues, rather than tackling directly issues related to food insecurity and Starvation. This underlines the fact that the legal frameworks involving Starvation have not yet been tested.³⁴⁸

From the perspective of Starvation, in the cases of Yemen and South Sudan, the Panel of Experts have focused on Starvation, famine and malnutrition in their activity of investigation and report. For instance, in the ‘Final Report on Yemen of 2016’,³⁴⁹ the Panel reported that in the siege occurred in Yemen, civilians were systematically exposed to Starvation and famine, that were inflicted as a method of warfare.³⁵⁰ Furthermore, in the reports of 2018 and 2019, the Panel analyzed the blockade occurred in 2017 detecting attacks directed to OIS and systematic obstructions to humanitarian assistance, causing severe food crisis.³⁵¹ Moreover, in the report of 2020, the experts discovered several cases of obstruction to humanitarian aid, including the detention and intimidation of aid workers as well as the illegitimate seizure of property belonging to aid workers or aid organizations.³⁵²

Another important case is illustrated by South Sudan, where sanctions were inflicted to eight individuals for violations of International Human Rights.³⁵³ In the designation of sanctions, the Panel of Experts played a crucial role in updating the Sanction Committee by reporting issues related to food insecurity and obstruction to humanitarian access. In its report, the panel stated discovered evidence on people who had participated in acts and decisions that constituted infringements of international humanitarian law, including those accountable for the circumstances that led to the humanitarian crisis, including famine.³⁵⁴ Later, with the Resolution NO. 2428/2018, the Security

³⁴⁸ A.J. Boucher, SUPRA note 344.

³⁴⁹ Final Report of the Panel of Experts on Yemen Established Pursuant to Security Council Resolution 240 (2014), UN/Doc S/210/192 (26 January 2016), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/008/25/PDF/N1500825.pdf?OpenElement>.

³⁵⁰ References are provided, for instance, by paragraph 167 of the Final Report of the Panel of Experts in Yemen, under ‘Obstruction of Humanitarian Assistance’, which states: *‘In this context, the systematic blockade of a city or country, as a form of military siege, to prevent goods from entering and people from leaving, raises serious implications from the perspective of international humanitarian law. When a city or a country’s access to food, water and/or medicine is cut off or steps are taken to deprive access to such basic necessities of human life, the principle of discrimination becomes to all practicable means and purposes effectively inverted — where not only is there no special protection for the civilian population, but civilians also become the population that will inevitably bear the brunt of the measures imposed’*.

³⁵¹ Security Council, SC 2019/83 (available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2019_83.pdf) and SC.

³⁵² UN Security Council, ‘Letter from the Panel of Experts on Yemen addressed to the President of the Security Council’ (27 January 2020), available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2020_70.pdf.

³⁵³ Final Report of the Panel of Experts on South Sudan, Security Council S/2017/326 (April 2017), available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_326.pdf

³⁵⁴ Final Report of the Panel of Experts on South Sudan, Security Council, ‘Recommendations’ para 136 (a), available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_326.pdf3.

Council inflicted sanctions towards General Malong for impeding the civilian population to have access to humanitarian aid, causing hunger and malnourishment.³⁵⁵ The case of Paul Malong is the first precedent of sanctions related to Starvation crimes, representing an essential step forward for the protection and prevention of food insecurity.³⁵⁶ The result of the trial may represent an important turning point for the prosecution of core breaches of International Law and a crucial stepping stone for the further prosecutions of the crimes committed during the South Sudanese Civil War.

³⁵⁵ Security Council, Resolution 2428 (13 July 2018), Annex 1 it has been stated: ‘Malong ordered Sudan People’s Liberation Army (SPLA) units to prevent the transport of humanitarian supplies across the Nile River, where tens of thousands of civilians were facing hunger, claiming that food aid would be diverted from civilians to militia groups. As a result of Malong’s orders, food supplies were blocked from crossing the Nile for at least two weeks’.

³⁵⁶ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC, see SUPRA note 3 pages 327-330.

CHAPTER 3: WEAPONIZED STARVATION: THE CONFLICTS IN SUDAN and SOUTH SUDAN

3.1 Starvation Crimes in Darfur (2003-2008)

The Sudanese authoritarian government (held by General Omar Al-Bashir) conducted a military campaign to appease the uprising rebellions occurred in Darfur in 2003. The military strategy adopted by the government involved the recruitment of paramilitary groups and militias to reduce the opponent's capacity of responding, by attacking the insurgent's economic and social infrastructures.³⁵⁷ These paramilitary forces often held their actions in conjunction with the government's army and the air force. Their actions were generally rewarded with cattle, livestock or land that were looted during the conflicts.³⁵⁸ One of the most known militias that served the Sudanese Government was the *Janjaweed*, suspected of committing numerous crimes against communities or ethnic groups that were thought to be standing with the rebels.³⁵⁹ The objective of Al-Bashir was to eradicate the rebellion by displacing the communities supporting the insurgents and by destroying all the possible resources that could result indispensable for their survival.³⁶⁰ Various villages were devastated, crops and food facilities were burned, and more than one million people were displaced.³⁶¹ For the conflict in Darfur, Starvation resulted to be an instrumental tool for the achievement of the government's goals, together with the commission of other crimes (*i.e.*, killing, torture, rape and pillage).³⁶²

The armed conflict and the strategies used to defeat the rebellion caused the death of over 230,000 people. Most of the deaths were determined by hunger, forced displacement, killing and disease.³⁶³ To lessen the harsh effects of the conflict, various humanitarian operations were organized to assist the Sudanese refugees and victims. However, the government interfered with the humanitarian aid by

³⁵⁷ A. De Waal, 'Counter-insurgency on the Cheap' (London Review Books, 2004), pages 716 -725.

³⁵⁸ J. Flint, A. De Waal, Darfur: 'A new History of a Long War' (London: Zed Books, 2008).

³⁵⁹ 'Darfur: Trial of Janjaweed leader must not be 'a false dawn' for justice, Security Council Hears (United Nations, UN News), available at: <https://news.un.org/en/story/2022/08/1125272>.

³⁶⁰ See SUPRA note 37.

³⁶¹ D. Guha-Sapir, O. Degomme, 'Darfur: Counting the Deaths: Mortality Estimates from Multiple Surveys' (Brussels: Center for research on the Epidemiology of Disasters, 2005).

³⁶² Humanitarian Aid Commission, 'Humanitarian Situation in Sudan' (Khartoum Ministry of Humanitarian Affairs, 2009).

³⁶³ US General Accountability Office, 'Darfur Crisis: Deaths estimates demonstrate severity of crisis, but their accuracy and credibility could be enhanced' (2006).

placing various limitations on the humanitarian supplies.³⁶⁴ These actions worsen the conditions of remote communities who were exposed to severe life conditions due to the cut off of food supplies and medicines. The government justified its actions by claiming that several humanitarian organizations were believed of assisting the rebel cause or were violating their mandates by false reporting.³⁶⁵ The large-scale attacks and the crimes committed in this conflict, had such calamitous effects that they drew the attention of the United Nations Security Council. In March 2005, the UN Security Council, with the Resolution NO. 1593, submitted Darfur's case to the ICC, and the prosecutor demanded for arrest warrants for numerous high-ranking government officials on charges of war crimes, crimes against humanity, and genocide.³⁶⁶ It is essential to underline that, although Sudan is not a State Party to the Rome Statute, the ICC's jurisdiction over the territory of Darfur, is justified by the referral of the UNSC.³⁶⁷ The crimes that fall-in the jurisdiction of the court are the ones listed in the Rome Statute, committed in Darfur since 1 July 2002.³⁶⁸

In consideration of the International Commission of Inquiry's report on violations of international humanitarian law and human rights law in Darfur (S/2005/60),³⁶⁹ the UNSC stated that the situation in Sudan continues to constitute a threat to international peace and security. The Commission was created by the UN Secretary-General for the purposes of investigating and reporting the several violations of international humanitarian law and human rights law in Darfur. The goal of these legal actions was to punish the perpetrators and to prevent further similar offences.³⁷⁰

The prosecution of the International Criminal Court, which started in June 2005, has involved Sudanese government officials, militia leaders and leaders of the resistance forces. The case of Darfur constitutes the first one to be referred to the ICC by the UNSC and the first ICC prosecution to directly involve the territory of a country that is not a party to the Rome Statute. Furthermore, the President Al-Bashir is the first sitting President to be charged for the commission of the crime of genocide by

³⁶⁴ S. Pantuliano, I. Mosel, 'The long Road Home: Opportunities and Obstacles to the Reintegration of IDP's and Refugees Returning to Southern Sudan and the Three Areas' (Humanitarian Policy Group, 2008); D. Keen, 'The Benefits of Famine: A Political Economy of Famine and Relief in Southwestern Sudan 1983-9' (Ohio University Press, 2008).

³⁶⁵ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022), pages 97-103.

³⁶⁶ International Court of Justice, ICC-02/05, 'Darfur, Sudan', available at: <https://www.icc-cpi.int/darfur>.

³⁶⁷ Statement on The Rule of Law at National and International Levels, 'The 67th Session United Nations General Assembly Counsellor Amanuel Yoanes Ajawin (11 October 2012), available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/rule_of_law/south_sudan.pdf.

³⁶⁸ Security Council, Resolution No. 1593 (2005), available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Darfur%20SRES1593.pdf>.

³⁶⁹ International Commission of Inquiry's report on violations of international humanitarian law and human rights law in Darfur (S/2005/60).

³⁷⁰ International Court of Justice, ICC-02/05, 'Darfur, Sudan', SUPRA note 33.

the Court. At the moment, he is not in the custody of the Court and neither the two arrests warrant against him have been carried out.³⁷¹ Until Al-Bashir is arrested and brought before the Court in the Hague, his case will stay at the Pre-Trial stage, since the International Criminal Court ‘does *not try individuals unless they are present in the courtroom*’.³⁷² According to the Pre-Trial Chamber I, there are reasonable reasons to believe that Al Bashir, as the de jure and de facto President of the State of Sudan and chief leader of the Sudanese Armed Forces played a crucial role in commanding the military campaigns, involving various unlawful attacks, followed by repeated acts of pillage of towns and villages mainly inhabited by civilians belonging to different ethnic groups (*i.e.*, Fur, Masalit and Zaghawa).³⁷³ Moreover, members of these ethnic groups were subjected to murder, sexual violence, torture and forced displacements. Moreover, according to the Pre-trial Chamber I, the unlawful activities carried out by the perpetrator were conducted with the direct intention of destroying the aforementioned ethnic groups.³⁷⁴

Despite the difficulties related to the punishment and prosecution of Mr. Al-Bashir, there is an ongoing ICC’s trial for the leader of the Janjaweed armed group, Mr. Ali Muhammad Ali Abd-Al-Rahman (also known as Al Kosheib). He is accused of 31 counts of war crimes and crimes against humanity perpetrated in Darfur between August 2003 and April 2004 .³⁷⁵ The Janjaweed allegedly committed several unlawful attacks, including ethnic cleansing of civilians, burning and looting from various villages (in the areas of Mukjar, Bindisi and Garsila), widespread rape, killings and torture. The International Criminal Court set the first arrest warrant in 2007 and a second one was issued in 2018. The charges were reinforced into 31 charges ahead of the confirmation of charges of hearings. All charges were recognized by the judges who confirmed the case for trial. ³⁷⁶ On 5 April 2022, the trial opened before the Trial Chamber I and is currently ongoing.³⁷⁷

³⁷¹ International Criminal Court, ‘The Prosecutor v Omar Hassan Ahmad al-Bashir’, ICC-02/05-01/09, available at: <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/AlBashirEng.pdf>.

³⁷² ‘Al Bashir Case: The Prosecutor v. Omar Hassan Ahmad Al Bashir’, (ICC-02/05-01/09, International Criminal Court), available at: <https://www.icc-cpi.int/darfur/albashir>.

³⁷³ ‘Situation in Darfur, Sudan: The Prosecutor v Omar Hassan Ahmad Al Bashir’ (ICC-02/05-01/09, International Criminal Court), available at: <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/AlBashirEng.pdf>.

³⁷⁴ See SUPRA note 39.

³⁷⁵ ‘Darfur war crimes suspect appears before International Criminal Court’ (UN News Global Perspective Human Stories, United Nations, 5 April 2022), available at: <https://news.un.org/en/story/2022/04/1115612>; ‘First ICC Trial on Darfur Crimes: Ali Mohammed Ali, Known as Ali Kosheib or Kushayb, Janjaweed Leader’ (Human Rights Watch, March 29, 2022), available at: <https://www.hrw.org/news/2022/03/29/first-icc-trial-darfur-crimes-ali-mohammed-ali-known-ali-kosheib-or-kushayb>.

³⁷⁶ SUPRA note 41.

³⁷⁷ ‘Abd-Al-Rahman Case, The Prosecutor v Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)(ICC-02/05/05-01/20, International Criminal Court), available at: <https://www.icc-cpi.int/darfur/abd-al-rahman>.

3.2 Mass Starvation in the Civil War of South Sudan

The infliction of Starvation as a tactic of warfare occurred also after the end of the Sudanese Civil War (1983-2005), which led to the independence of South Sudan. Numerous evidence proves that deprivation and attacks against OIS have often been used during South Sudan's civil war for the purpose of achieving political, military and economic benefits.³⁷⁸

The Comprehensive Peace Agreement, which ended the war in South Sudan in 2005, was only allowed to be signed by one of numerous armed groups involved in the conflict, the Sudan People's Liberation Army (SPLA). The SPLA leadership used this position to seek the inclusion of additional southern armed groups in the Southern national government.³⁷⁹ After the independence, several ethnic groups were joined together into one national-military force. At that time, the leading party was the Sudan People's Liberation Movement which, together with the SPLA, formed the SPLM/A. The SPLM/A can be generally defined as a liberation movement, a political party and an army.³⁸⁰ The two main ethnic groups that formed the SPLM were the Dinka and the Nuer. Both of these groups were fairly represented in the government by President Kiir (leader of the Dinka) and Vice-president Riek Machar (leader of the Nuer). At the end of 2013, the SPLM/A could no longer control political rivalries. The Sudanese government accused Vice-president Machar of planning a military coup to overthrow the political power. On the contrary, Mr. Machar claimed that President Kiir's accusation was functional for repressing the opposition. The accusations of the President brought to the arrest of several leading party figures, except the Vice-president who escaped in Juba.³⁸¹ Soon after political division, military forces (including former government officials, defectors and militias) loyal to Machar seized control over the North-eastern part of South Sudan, including the territories of Unity State and Jonglei and the oil fields in the Upper Nile states.³⁸²

This conflict has its origins in South Sudan's second war of independence, which began in 1983 and ended in 2005. Although the South Sudanese were split amongst rival ethnic groups, Sudan was their common enemy. The Comprehensive Peace Agreement, which put an end to the war, gave the SPLM six years to turn its liberation movement into a unified political party that could rule once the country

³⁷⁸ A. De Waal: 'The Real Politics of the Horn of Africa: Money, War and the Business of Power (Cambridge, Polity, 2015).

³⁷⁹ H. Wild, J. Madut Jok, R. Patel, 'The Militarization of Cattle Raiding in South Sudan: How a Traditional Practice Became a Tool for Political Violence' (Journal of International Humanitarian Action, 2018).

³⁸⁰ M. Schomerus, T. Allen, 'Southern Sudan at Odds with Itself' (2014 Humanitarian Needs Overview South Sudan, 2013).

³⁸¹ Capitol city of South Sudan.

³⁸² N. Tut Pur, P. Aufiero, 'South Sudan at a Crossroads: Challenges and Hopes 10 years after independence' (Human Rights Watch, 9 July 2021), available at: <https://www.hrw.org/news/2021/07/09/south-sudan-crossroads>.

gained its independence in 2011. The goal was to make its movement more democratic and provide other political ideologies and ethnic groups representation under its parent organization.³⁸³

Following the end of the conflict, South Sudan's ethnic groups' common desire for independence vanished, and tensions once again rose. However, in order to maintain their position as party leaders, the SPLM leadership ignored the discontent of the minority ethnic groups and concentrated on advancing their own political interests.³⁸⁴

The South Sudanese government disregarded its responsibility for nation-building and failed to enact the necessary changes to avert this calamity. Given that Machar is supported by the Nuer and Kiir by the majority of the Dinka, what began as a political conflict has now devolved into an ethnic one.³⁸⁵

The war that began in Juba in 2013, rapidly extended all over the country causing more than 10,000 deaths by 2014 and displacing more than one million civilians escaping the conflict.³⁸⁶ Affiliations in South Sudan frequently follow ethnic lines, there are several reports providing evidence of Dinka combatants murdering Nuer civilians and vice versa.³⁸⁷ Apart from these two factions, fighters belonging to other ethnic groups have mobilized and are retaliating numerous attacks on locals elsewhere.³⁸⁸ Under the threat of sanctions from the international community, a cease-fire agreement between Kiir and Machar was reached in June 2014, obliging both sides to form a transitional government of national unity within 60 days.

In April 2016, Machar turned back to Juba and was nominated vice president, representing the first step toward putting an end to the civil war. However, following his return, political tensions remerged, and thousands of people were once again displaced when fighting erupted between government forces and opposition groups. During 2017 and 2018, several cease-fires were arranged between the two parties and other factions involved, but they were later broken. In September 2018, after nearly five years of civil conflict, the factions involved in the war signed the Revitalized Agreement on the Resolution of the conflict in South Sudan, which brought to a final cease fire and the reintroduction

³⁸³ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: 'Accountability for Mass Starvation: Testing the Limits of the Law' (Oxford Monographs in International Humanitarian and Criminal Law, Oxford Press 2022).

³⁸⁴ 'Civil War in South Sudan', Center for Preventive Action (US Council on Foreign Relations, 12 May 2022).

³⁸⁵ J. Craze, J. Tubiana, C. Gramizzi, 'A State of Disunity: Conflict Dynamics in Unity State, South Sudan', 2013-15 (Small Arms Survey, 2016).

³⁸⁶ International Organization for Migration Displacement Tracking Matrix, Conflict and Displacement Timeline: Wau/Western Bahr el Ghazal 2014-2016 (2016).

³⁸⁷ For instance, the OHCHR 'The State of Human Rights in the Protracted Conflict in South Sudan (2015)'; the HRC 'February 2019 Report of the Commission on Human Rights in South Sudan'; HRC 'January 2020 Report of the Commission on Human Rights in South Sudan';

³⁸⁸ OHCHR, 'The State of Human Rights in the Protracted Conflict in South Sudan' (4 December 2015).

of Machar as Vice-president. Despite the Agreement, news of ongoing assaults and violations underline worries that the tenuous truce may not last.³⁸⁹

Leer and Mayendit counties in the Unity State, have records of Starvation being used as a weapon of war. This area is particularly significant due to a large number of oil fields, moreover, it is the only state mostly populated by the Nuer ethnic group.³⁹⁰ Between April and June 2014, the northern territories of the Unity State suffered the first significant attack from the government forces and affiliated militias and paramilitary groups, bringing the Nuer forces to be confined to Bentiu's borders by the end of 2014.³⁹¹ Targets of attacks were often livelihoods, villages, farms. Furthermore, the government forces frequently looted resources that could be easily transported (*i.e.*, generators) for their advantage.³⁹² Agriculture involves preparing the land for planting, cultivating crops, and harvesting them. Almost all of South Sudan experiences one rainy season per year. In most locations, the peak of rain typically coincides with the time when hunger is at its worst because the last of the previous harvest has been consumed and the new one has yet to come. This time of hunger is typically made bearable for farmers by livestock, trade, and other activities.³⁹³ Beside climate conditions, facing the dry period depends on factors affecting livelihoods, such as having food supplies deriving from a successful harvest of the previous years. In areas like South Sudan, where food security is often precarious, armed conflicts can have catastrophic effects over the population, causing famine and Starvation.³⁹⁴ The incursion of the government forces and allies occurred during the planting season and several trade routes into the territories of central and southern Unity were significantly interrupted. This situation determined the total breakdown of the agriculture system, the production of food (*i.e.*, cereals and maize) collapsed until 2019, provoking severe food insecurity.³⁹⁵

³⁸⁹ A/HRC/40/CRP.1, 'Report of the Commission on Human Rights in South Sudan', (21 February 2019); The Economist, 'South Sudan's War has cooled' (21 September 2019), available at: https://www.economist.com/middle-east-and-africa/2019/09/21/south-sudans-war-has-cooled?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=18151738051&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gclid=Cj0KCQiAorKfBhC0ARIsAHDzslv2UgTcIK1UEgQ3uo5zlu-Xaav-ohrlfjtrccwjawqBSb3eum6fcdsaAon5EALw_wcB&gclsrc=aw.ds.

³⁹⁰ J. Craze, J. Tubiana, C. Gramizzi, 'A State of Disunity: Conflict Dynamics in Unity State, South Sudan', 2013-15 (Small Arms Survey, 2016).

³⁹¹ Bentiu is the capital of the Unity State.

³⁹² J. Craze, J. Tubiana, C. Gramizzi, SUPRA note 48

³⁹³ E. Muchomba and B. Sharp, 'Southern Sudan Livelihood Profile', Southern Sudan Commission for Census, Statistics and Evaluation (Livelihoods Analysis Forum, 2006).

³⁹⁴ C. Newton, K. Richard, 'Living Memory of Famine in South Sudan: Using Local Knowledge to Inform Famine Early Warning (Humanitarian Practice Network of Overseas Development Institute, 10 October 2018).

³⁹⁵ See 2014-2021 WFP/FAO Special Report on Food Security Assessment Mission to the Republic of South Sudan' (CFSAM), available at: <https://www.fao.org/3/cc0474en/cc0474en.pdf>.

The mid-dry season, from January to March, is the season with the greatest risk of severe food insecurity in the Unity State. The lack of rain and the ensuing loss in vegetation reduces both access to alternate food sources, such as food and fish, as well as milk output from livestock. Due to the unavailability of food, individuals are forced to move and travel into wetlands, searching for remaining food sources. In these instances, humanitarian operations are crucial to avoid or lessen the risks of rising famine.³⁹⁶ Thus, it is not a coincidence that in the Leer County the worst famines occurred between December and March.³⁹⁷

Military operations continued in the territory of the Unity State during 2015. The conflict determined the lost, for the second consecutive year of the planting and harvesting season for the communities, worsening the famine that occurred in 2014.³⁹⁸ The attacks, that came from the government forces situated in both the southern and northern territories of the state (via Lakes State and the White Nile River), disrupted trade lines that were crucial for the southern Unity populations.³⁹⁹ The primary goal of the President Kiir, was to regain the control over the oil infrastructures (including the Tharjath region of Koch county), which represented an extremely valuable asset for South Sudan's economy. According to a report of the OHCHR and UNMISS⁴⁰⁰ of 2015, everything in the state that was not under the control of the government and affiliated forces (*i.e.*, the town of Leer) was retained as being open to looting, property destruction, seizure and violence.⁴⁰¹ Victims of these assaults were often civilians, their animals and their properties. Furthermore, the brutality and unlawfulness of the attacks were underlined by the UN Panel of Experts, in the Letter of 21 August 2015 to the Security Council,

³⁹⁶ ACAPS, 'South Sudan: Food Security and Nutrition' (5 April 2017), available at: https://www.acaps.org/sites/acaps/files/products/files/20170405_acaps_briefing_note_south_sudan_food_security_and_nutrition.pdf.

³⁹⁷ The IPC declared severe food insecurity in December 2015, January and February 2017. Furthermore, the same institution provided in September 2018 a projection of food security protection through humanitarian operations, highlighting extreme risks of Starvation during the period of January and March 2019.

³⁹⁸ 'Crisis Impacts on Households in Unity State, South Sudan, 2014-2015 (UN Office of the Deputy Humanitarian Coordinator in South Sudan, 2016), available at: https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/assessments/160202_crisis_impacts_on_households_in_unity_state_ss_0.pdf.

³⁹⁹ Specifically, violent assaults were directed against Tayer, which was an important riverside commerce hub and an essential commercial line for the southern Unity populations.

⁴⁰⁰ United Nations Mission in South Sudan, which is a United Nations peacekeeping mission for South Sudan established in 2011 by the United Nations Security Council Resolution NO. 1996.

⁴⁰¹ 'The State of Human Rights in the Protracted Conflict in South Sudan (UNMISS, Human Rights Division, 4 December 2015), which stated: *'From the middle of 2015, a new pattern emerged, particularly in the central and southern counties of Unity, with entire villages being burned down, food crops destroyed, and livestock looted. There are indications that this may have been a deliberate strategy by the government, or the SPLA aimed at depriving civilians of any source of livelihood with a view to forcing their displacement. Very few places in areas of conflict have been safe, as the parties have intentionally attacked traditional safe havens, such as places of worship, hospitals and, from time to time, United Nations bases. The report finds that gross violations and abuses of human rights and serious violations of international humanitarian law have occurred in all areas where fighting has taken place, attributable to all parties to the conflict.'*

which affirmed evidence of systematic destruction of villages, towns and other facilities that are not of military interest.⁴⁰²

In this period, during the attacks, cattle represented the major trophies of battle for the affiliated militias and paramilitary groups (*i.e.*, the Bul Nuer) who aided the SPLA forces.⁴⁰³ The numerous offences directed against OIS for the Unity State's communities, provoked intense migrations in the camps for the civilian protection (*i.e.*, the one in Bentiu) and in furthers potential safe zones.⁴⁰⁴ After this offensive, several SPLA soldiers and their supporters stayed in central Unity garrisons and proceeded to attack civilians practically until the end of the year. According to a report of Amnesty International, the attacks often followed the same strategy, targets for killing were male youngsters and generally men, women and girls were targets of rape and abuse, while property (cattle, houses and farms) were for destruction and looting.⁴⁰⁵ According to the UNMISS and UN's Office of the High Commissioner for Human Rights,⁴⁰⁶ the objective of the offenders was to use deprivation of objects indispensable for the population's survival to force their displacement, creating an empty zone across the main transport routes in Central and Southern Unity.

The seriousness of the attacks and their timing, together with the deprivation of fundamental resources contributed to determine a massive food crisis in the area of the Unity State, and in particular in the Leer country.⁴⁰⁷ The outcome of those circumstances determined a long-term dysfunction of the markets, which stayed inaccessible until 2020.⁴⁰⁸ In consideration of the fact that this area of South Sudan has been traditionally dependent on trade lines based on incoming cereals and on outgoing

⁴⁰² P. Knopf, 'Letter dated 21 August 2015 from the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206 (2015) addressed to the President of the Security Council, United Nations Security Council, available at: <https://digitallibrary.un.org/record/800180?ln=ru>.

⁴⁰³ Human Rights Research Watch, 'They Burned It All': Destruction of Villages, Killing and Sexual Violence in the Unity State, South Sudan (22 July 2015), available at: <https://www.hrw.org/report/2015/07/22/they-burned-it-all/destruction-villages-killings-and-sexual-violence-unity-state>.

⁴⁰⁴ International Organization for Migration Displacement Tracking Matrix, 'Conflict and Displacement Timeline: Bentiu/Unity, 2014-2016 (2016), available at: https://dtm.iom.int/search?search=south+sudan&type=All&created=&sort_by=search_api_relevance&sort_order=DESC.

⁴⁰⁵ Amnesty International, 'We are Still Running: War Crimes in Leer, South Sudan', available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6544862016ENGLISH.pdf>.

⁴⁰⁶ 'The State of Human Rights in the Protracted Conflict in South Sudan (UNMISS, Human Rights Division, 4 December 2015).

⁴⁰⁷ Mercy Corps, Emergency Market Mapping and Analysis (EMMA): 'Livestock Off-take and Sorghum Market Systems in Leer County, Unity State, South Sudan' (January 2015), available at: file:///Users/michelangelo/franceschini/Downloads/MercyCorps_SouthSudan_LeerEMMA_Feb2015_0.pdf.

⁴⁰⁸ South Sudan Economic Analysis Show Growth Promise Amid Fragility (The World Bank, available at: <https://www.worldbank.org/en/news/press-release/2020/04/02/south-sudan-economic-analysis-shows-growth-promise-amid-fragility>); 'Humanitarian Needs Overview: South Sudan' (Humanitarian Programme Cycle 2022, available at: https://fscluster.org/sites/default/files/documents/ssd_hno_2022_26feb2022.pdf); B. Conley, De Waal SUPRA note 47.

cattle, the loss of the market activities had a catastrophic impact on the civilian food access.⁴⁰⁹ Moreover, the continuous use of violence in the Unity State, along with numerous threats to the humanitarian personnel, forced the suspension of almost all of the humanitarian operations (*i.e.*, the Red Cross and the World Food Programme), including the ones directed to provide food assistance.⁴¹⁰ The detriment of life conditions, especially in the Leer County, induced civilians to migrate in areas where they could have access to food.⁴¹¹ By October 2015, the Bentiu protection camp hosted and provided assistance to over 120,000 civilians escaping the war.⁴¹²

Further military operations were undertaken by the Government forces in the Leer and Mayendit counties during 2017. The continuous attacks directed against an area already suffering food crisis,⁴¹³ suggested the protraction of war strategies and policies of using Starvation and deprivation of OIS for the purpose of eliminating or completely dispossessing civilians.⁴¹⁴ During this period, the territories of the Unity State and its oil revenues were controlled by the Bul Nuer group, loyal to the governments forces. From April to June 2018 numerous military activities were undertaken in the Leer County and Mayendit following the same strategies as in previous the operations, implying massive attacks against villages and food facilities, looting, assaults against humanitarian personnel and sexual violence against girls and women.⁴¹⁵ Beside the displacement of numerous civilians, this violent campaign caused the impossibility for humanitarian organization to aid the victims. As mentioned before, the attacks occurred during the period of planting, causing harsh effects on the agricultural season.⁴¹⁶ The UNMISS Human Rights Division (HRD) and OHCHR reported the attack

⁴⁰⁹ ‘Livestock Off-take and Sorghum Market Systems in Leer County, Unity State, South Sudan’ (January 2015), SUPRA note 66.

⁴¹⁰ IRCR, ‘South Sudan: IRCR forced to Withdraw form Leer County Following Threats and Looting (5 October 2015), available at: <https://www.icrc.org/en/document/south-sudan-conflict-leer-looting-icrc-forced-withdrawal#:~:text=Foundations%20and%20trusts-,South%20Sudan%3A%20ICRC%20forced%20to%20withdraw%20from,County%20following%20threats%20and%20looting&text=Juba%2C%205%20October%202015%20%2D%20The,and%20its%20aid%20workers%20threatened.>

⁴¹¹ At that time, one of the main destinations for the people migrating from Leer and Mayendit were the Panyijiar County and the Civilians’ Protection Camps (*i.e.*, the one in Bentiu).

⁴¹² K. Ryan, ‘Letter dated 13 April 2017 from the Panel of Experts on South Sudan established pursuant to Security Council’, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/069/64/PDF/N1706964.pdf?OpenElement>.

⁴¹³ As suggested by the declaration of famine of 21 February 2017 by the IPC.

⁴¹⁴ UNICEF, ‘Famine Hits Parts of South Sudan (20 February 2017), available at: <https://www.unicef.org/press-releases/famine-hits-parts-south-sudan>.

⁴¹⁵ UNMISS, HRD and OHCHR, ‘Report on Indiscriminate Attacks against Civilians in Southern Unity, South Sudan’ (2018), available at: https://www.ohchr.org/sites/default/files/Documents/Countries/SS/UNMISSReportApril_May2018.pdf.

⁴¹⁶ UNICEF, ‘Conflict pushes South Sudanese into hunger – more than 6 milion people face desperate food shortages: Call for lasting peace to prevent food shortages’ (28 September 2018), available at: <https://www.unicef.org/press-releases/conflict-pushes-south-sudanese-hunger-more-6-million-people-face-desperate-food>.

of at least forty villages as deliberate destruction not justified by military necessity, coupled with pillage, and it was claimed that this pattern of village destruction was recurrent.⁴¹⁷

Government and associated armed groups attempted to reclaim areas deemed essential to the survival of the ruling regime, such as the state capital and oil installations, by purposefully using famine as a weapon of war.⁴¹⁸ For the purpose of defending what was retaken, they simultaneously sought to contain and weaken, if not completely eliminate, the armed opposition in the last resisting territories.⁴¹⁹ Moreover, members of the resistance groups were given the option of joining the government's cause or having their county declared as an ethical 'free-zone', where complete impunity prevailed.⁴²⁰ Political negotiations between the government forces and local elites relied heavily on the threat to the latter's livelihood. Furthermore, joining the government's forces could also be beneficial to their precarious conditions by looting and pillaging the neighbor's villages.⁴²¹

Hence, in the framework of Leer and Mayendit, Starvation has been deliberately used as a war strategy for the purpose of strengthening the regime and to eliminate the Nuer communities, loyal to the former Vice-president Machar.⁴²²

Vicious offensives were conducted also in the Greater Baggari area⁴²³ in the Wau County from 2016 to 2018. According to the UN Panel of Experts on South Sudan, during most of 2017, civilian accesses to humanitarian operations and food assistance were repeatedly avoided, resulting in the deliberate infliction of Starvation.⁴²⁴ Moreover, in accordance with several reports and the Conference room

⁴¹⁷ UNMISS, HRD and OHCHR, 'Indiscriminate Attacks against Civilians in Southern Unity, April-May 2018, South Sudan (July 2018), available at: https://www.ohchr.org/sites/default/files/Documents/Countries/SS/UNMISSReportApril_May2018.pdf; Amnesty International, 'War Crimes in the Unity State, South Sudan (September 2018), available at: <https://www.amnesty.org/en/latest/news/2018/09/war-crimes-in-unity-state-south-sudan/>.

⁴¹⁸ K. Ryan, 'Letter dated 13 April 2017 from the Panel of Experts on South Sudan established pursuant to Security Council', available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/069/64/PDF/N1706964.pdf?OpenElement>.

⁴¹⁹ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: SUPRA note 42.

⁴²⁰ Amnesty International: 'We are Still Running: War Crimes in Leer, South Sudan', available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6544862016ENGLISH.pdf>.

⁴²¹ A clear example is provided by the Bul Nuer ethnic group, which joined Kiir's cause rather than the Machar's one. Their efforts were rewarded with the authorization of looting the cattle of the other communities in the Unity State.

⁴²² Commission on Human Rights in South Sudan (UNCHRSS),); 'There is nothing left for us: Starvation as a method of warfare in South Sudan' Conference Room Paper of the Commission on Human Rights in South Sudan (5 October 2020); 'Report of the Commission on Human Rights in South Sudan, OHCHR (21 March 2019).

⁴²³ Area including territories of subdivisions of the Wau County (Northwest of South Sudan).

⁴²⁴ K. Ryan, 'Letter dated 20 November 2017 from the Panel of Experts on South Sudan addressed to the President of the Security Council, UN Security Council, available at: <https://digitallibrary.un.org/record/1323268#record-files-collapse-header>.

paper of the UNCHRSS,⁴²⁵ the war tactics used by the government forces were analogous to the ones occurred in the Unity State, including the systematic pillage and destruction of civilian properties.⁴²⁶ Even though elements of food insecurity were detected during 2017, there have never been a declaration of famine for this area. The conflict occurred in Greater Baggari involved the SPLA and affiliated armed groups of the IO,⁴²⁷ displacing over 25,000 civilians in Protection of Civilians Sites.⁴²⁸ During the conflict, the government and affiliated forces to seize the control over Great Baggari interrupted several consecutive farming seasons, disrupted crucial trade routes and guarded the roads connecting the area, killing or sexually abusing the civilians who were trying to reach the safer Wau town.⁴²⁹ The ones unable to go to Wau town were pushed and forced to settle into forests situated in the south-west.⁴³⁰ The denial of accessing humanitarian assistance ended in December 2018, with the reopening of the roads connecting Wau Town and Greater Baggari.

The cases of Greater Baggari and of Unity State show how famine constitutes a process requiring several years of coordinated violence. Furthermore, the methods of warfare used by the SPLA, including the repeated denial for civilians to access humanitarian aid, reasonably suggest that the infliction of Starvation was intentional.⁴³¹

In September 2018, the Transitional Government reaffirmed its engagement in instituting a Hybrid Court of South Sudan with the assistance of the African union, for the purpose of prosecuting and punishing international crimes,⁴³² including probably the infliction of Starvation as a war crime.⁴³³

Due to the civil war, South Sudan is currently facing one of the most worrying food crises ever.

⁴²⁵ Commission on Human Rights in South Sudan (UNCHRSS),); 'There is nothing left for us: Starvation as a method of warfare in South Sudan' Conference Room Paper of the Commission on Human Rights in South Sudan (5 October 2020); 'Report of the Commission on Human Rights in South Sudan, OHCHR (21 March 2019).

⁴²⁶ Report of the Commission on Human Rights in South Sudan (13 March 2018).

⁴²⁷ The 'Fertit Lions', Military forces devoted to Machar

⁴²⁸ International Organization for Migration Displacement Tracking Matrix, 'Conflict and Displacement Timeline: Wau/Western Bahr el Ghazal 2014-2016

⁴²⁹ 'Report of the Commission on Human Rights in South Sudan', UN Doc. A/HRC/43/56 (31 January 2020).

⁴³⁰ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC: SUPRA note 42.

⁴³¹ See SUPRA note 109.

⁴³² 'There is nothing left for us: Starvation as a method of warfare in South Sudan', (HRC, Commission of Human Rights, 5 October 2020), A/HRCH/45/CRP.3.

⁴³³ N.T. Pur, 'A glimmer of hope for South Sudan's victims' (Human Rights Watch, 2021), available at: <https://www.hrw.org/news/2021/01/31/glimmer-hope-south-sudans-victims>.

3.3 Strategies for the Prosecution of the crime of Mass Starvation in South Sudan

For the prosecution of the international crimes committed during South Sudan's armed conflict, it is necessary to identify and to prove the existence of the crime's material element (*the actus reus*). Hence, from the perspective of Mass Starvation, the task of prosecutors is to demonstrate beyond any reasonable doubt that the perpetrator deprived the civilian population of objects indispensable for their survival (including food and water supplies, crops, livestock, fuel, electricity).⁴³⁴ It is useful to bear in mind that the qualification of the OIS differ depending on the context where the deprivation occurs.⁴³⁵ Therefore, goods indispensable for the survival of an urban population may differ from the ones indispensable for a rural population (such as harvesting or fishing).⁴³⁶ To do so, the prosecutors must first identify and understand how the civilian livelihood system works and what are the resources on which it depends on. Once this step is completed, the prosecution must focus on assessing whether these objects have been deprived by the perpetrator. The term deprivation generally relates to activities that may consist of assaulting, destroying, removing, impeding access or rendering unavailable objects that are necessary for the civilian population's survival.⁴³⁷ Moreover, the Rome Statute includes to the concept of deprivation also the restriction for civilians to access humanitarian aid.⁴³⁸

In the context of the South Sudanese civil war, several UN reports provide evidence of numerous infringements of IHL and IHRL⁴³⁹, for example, for the purpose of weakening the area occupied by the opposite faction, various agricultural fields were burned, and food supplies were often subjected to pillage and looting.⁴⁴⁰ In numerous cases (*i.e.*, Leer County and Mayendit) the government forces and their affiliated armed groups systematically deprived civilians of OIS through attacks directed against villages, food supplies (markets, farming fields, livestock, water installations, hospitals).⁴⁴¹

⁴³⁴ Elements of Crimes, Article 8 (2)(b)(xxv).

⁴³⁵ K. Dörman, L. Doswald-Beck, 'Elements of War Crimes under the Rome Statute of the International Criminal Court' (Cambridge University Press, 2003).

⁴³⁶ C. Pilloud, 'Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949' (International Committee of the Red Cross).

⁴³⁷ 'Commentary on the Additional Protocols', ICRC.

⁴³⁸ Art. 8(2)(b)(xxv) (Rome Statute), which states: '*Intentionally using Starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions*'

⁴³⁹ 'Report of the United Nations High Commissioner for Human Rights' (A/HRC/31/49, UNHCHR, 10 March 2016); 'January 2020 Report of the Commission on Human Rights in South Sudan' (HRC 2020); 'The State of Human Rights in the Protracted Conflict in South Sudan (OCHR, UNMISS, 4 December 2015); 'Report of the Commission on Human Rights in South Sudan' (HRC, 21 February 2019);

⁴⁴⁰ 'Starvation being used as a method of warfare in South Sudan' (OHCHR, UN Panel, 6 October 2020), available at: <https://www.ohchr.org/en/press-releases/2020/10/Starvation-being-used-method-warfare-south-sudan-un-panel>.

⁴⁴¹ See SUPRA note 93.

Many of the activities held during the conflict constitute several violations of the Rome Statute, therefore, they may be prosecuted under the ‘general category’ as war crimes of Starvation or as separate war crimes of pillaging/illegitimate seizure of property.⁴⁴² Further violations were committed during the military campaign in the Wau County and more generally in the Greater Baggari, where strict besiegement and systematic movement restrictions were imposed by the Government army to the civilians population, generating severe impacts on the area’s livelihood system. Subjected to movement restrictions was also the humanitarian relief personnel, which was often impeded to aid the civilian population suffering deprivation. Moreover, during the war, several times paramilitary groups and militias attacked and pillaged the humanitarian supplies and traders who transported food supplies and medicines.⁴⁴³ Similar violations, occurred in the area of Central Equatoria, and were committed by the forces in opposition (SPLA-IO, supporting Riek Machar), which often interfered with the humanitarian relief operations.⁴⁴⁴ The sum of all of these unlawful activities resulted in the movement en masse of the civilian population. Since the main source of sustenance of most communities in South Sudan derived from agriculture, herding of cattle and fishing, the forced displacement of the population generated calamitous outcomes on its economy and food security.⁴⁴⁵ From a legal perspective, the Republic of South Sudan is obliged to respect, protect, promote and fulfil the people’s human rights, without any discrimination, within its territory.⁴⁴⁶ This entails the fact that the country must ensure an adequate and effective remedy to the violations of such obligations.⁴⁴⁷ South Sudan is a State party to the African Charter on Human and People’s Rights and

⁴⁴² The Rome Statute, Art. 8 (2)(e)(v) and (xii), ‘Destroying or seizing the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war’; ‘Pillaging a town or place, even when taken by assault’.

⁴⁴³ ‘Indiscriminate attacks against civilians in Southern Unity, April-May 2018’ (UNMISS and UNHROHC), available at: https://www.ohchr.org/sites/default/files/Documents/Countries/SS/UNMISSReportApril_May2018.pdf; N. Tut Pur, ‘Surge in Attacks on Aid Workers in South Sudan: Authorities Should Improve Protection, Investigate Attacks’ (Human Rights Watch, 4 May 2022), available at: <https://www.hrw.org/news/2022/03/04/surge-attacks-aid-workers-south-sudan>; ‘Situation in South Sudan, Report of the Secretary General’ (UN Security Council, S/2022/468, 9 June 2022), available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2236422.pdf>; S/2022/689 (UN Security Council, 13 September 2022), available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2258941.pdf>; S/2022/918 (UN Security Council, 7 December 2022), available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2272929.pdf>; ‘Report of the Commission on Human Rights in South Sudan’ (A/HRC/46/53, 4 February 2021), available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/A_HRC_46_53.pdf.

⁴⁴⁴ HRC, ‘Report of the Commission on Human Rights in South Sudan’ (Human Rights Council, 23 February 2018).

⁴⁴⁵ ‘Conference Room Paper’ (UNHRC), ‘February 2019 Report the Commission on Human Rights in South Sudan’ (UNHRC).

⁴⁴⁶ Conference Room Paper’ (UNHRC), ‘February 2019 Report the Commission on Human Rights in South Sudan’ (UNHRC).

⁴⁴⁷ These principles are well exposed by the African Charter on Human’s Peoples’ Rights (adopted in 1981). South Sudan became a party of the Convention on 19 May 2016, and it entered into force on 19 August 2016. The compliance to the African Charter, suggest that numerous activities undertaken during the conflict (i.e, killing, torturing and sexual violence) constitute serious violations of this Convention.

five Human Rights Conventions, such as: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and its Optional Protocol,⁴⁴⁸ the Convention on the Elimination of all Forms of Discrimination against Women and its Optional Protocol,⁴⁴⁹ the Convention on the Rights of the Child.⁴⁵⁰ The African Commission on Human and People's Rights in particular, in a case involving alleged environmental degradations committed by the Nigerian government, stated that although there is not an explicit provision in the Charter that guarantees the right to food, such right is implicitly protected through the rights to life, to health and to economic, social and cultural development,⁴⁵¹ hence South Sudan is legally obliged to respect, fulfil and protect the right to food. At a domestic level, the right to life and physical integrity is protected by the country's Constitution (2011) and the Penal Code Act of 2008.⁴⁵²

In parallel, even if it isn't expressly mentioned in the Charter, the combined effects of articles 14 (right to property), 16 (right to enjoy the best attainable state of bodily and mental health), and 18 (right to family unit) should be interpreted as rights to housing or shelter under the Charter. This means that is forbidden the destruction of properties and shelter with no military interest, because 'when housing is destroyed, property, health, and family life are adversely affected'.⁴⁵³

In addition, South Sudan incorporated in 2012 the four Geneva Conventions of 1949 and its two Additional Protocols of 1977 into domestic law. This implies that, in accordance with Article 3 (Common to both the Geneva Conventions),⁴⁵⁴ the factions involved in the armed conflict (SPLA,

⁴⁴⁸ The Republic of South Sudan ratified to this Treaty in 2015.

⁴⁴⁹ The Republic of South Sudan ratified to this Treaty in 2015.

⁴⁵⁰ Ratified in 2015.

⁴⁵¹ *'The communication argues that the right to food is implicit in the African Charter, in such provisions as the right to life (Article 4), the right to health (Article 16) and the right to economic, social and cultural development (Article 22)'* (Social and Economic Rights Action Center (SERAC) for Economic and Social Rights (CESCR), available at: https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf).

⁴⁵² Article 11 of the South Sudanese Constitution states: *'Every person has the inherent right to life, dignity and the integrity of his or her person which shall be protected by law; no one shall be arbitrarily deprived of his or her life'*;

⁴⁵³ SUPRA Note 104, para 60: *'Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the [African] Charter a right to shelter or housing...'*

⁴⁵⁴ Article 3 Geneva Conventions 1949, *'In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1.) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms...shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

SPLA-IO and affiliated fighters) are obliged to distinguish between civilians (including the humanitarian relief personnel) and combatants during the conflict, avoiding any form of violence towards the ones who do not form an active party of the conflict. Moreover, the international human rights' legislation that have been recognized as customary law is likewise binding on the Republic of South Sudan.⁴⁵⁵ Thus, the obligations deriving from the provisions of international treaties, the related customary law, and more generally the ones concerning human rights, must be always observed during both peace times and armed conflicts.⁴⁵⁶ As a result, violations of these provisions (including war crimes) can be prosecuted by the national courts of South Sudan. On the other hand, as previously discussed, in the context of international criminal law, since South Sudan has not yet ratified the Rome Statute, the International Criminal Court may exercise its jurisdiction over the country only if there is a referral by the Security Council, a State Party or if the Prosecutor undertakes an investigation *proprio motu*.⁴⁵⁷

In accordance with the established rules of international law, Article 8 of the Rome Statute criminalizes grave infringements of the Geneva Conventions and other laws and provisions that apply to both international and non-international armed conflicts.⁴⁵⁸

It is essential to remember that not all of the conducts concerning the deprivation of OIS constitute the crime of Starvation. This mostly happens when core principles of IHL such as distinction⁴⁵⁹, proportionality⁴⁶⁰ and precaution⁴⁶¹ are observed and respected.⁴⁶² This means that if the attacks directed against the civilian objects are conducted in accordance with these principles, the crime of Starvation is not established. As an example, the attack against food supplies and facilities only used by the opponent's forces and not by civilians, fully respects the principle of distinction, thus, no violation of IHL is committed.⁴⁶³ Issues would rise, if those supplies are used both by civilians and

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples'.

⁴⁵⁵ Statement on The Rule of Law at National and International Levels, 'The 67th Session United Nations General Assembly Counsellor Amanuel Yoanes Ajawin (11 October 2012), available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/rule_of_law/south_sudan.pdf.

⁴⁵⁶ UNMISS, UNHROHC, 'Indiscriminate attacks against Civilians in Southern Unity, April-May 2018', para. 16.

⁴⁵⁷ ICC Statute, Articles 11-15-ter.

⁴⁵⁸ Article 8(2)(a)(b)(e) of the Rome Statute.

⁴⁵⁹ Rule 1, 'The Principle of Distinction between Civilians and Combatants, ICR Customary Law.

⁴⁶⁰ Rule 14, 'Proportionality in the Attack', ICR Customary Law.

⁴⁶¹ Rule 22, 'The Principle of Precautions against the Effects of Attacks', ICR Customary Law.

⁴⁶² The principle of distinction concerns the requirement for parties to distinguish between civilians and fighters, this means that attacks must be directed solely against combatants involved. The principle of proportionality in attack relates to the requirement for parties to not perpetrate attacks that might have harsh side effects on the civilians (*i.e.*, murder, injury, damage to civilian property). At last, the principle of precaution requires for the parties to take all the possible precautions to protect the civilian population and their properties against the negative effects deriving from the attacks.

⁴⁶³ API I, Art. 54 (3)(a).

combatants. In this circumstance the crime of Starvation may occur if the attacks will expose the civilians to inadequate food or water, therefore leading them to Starvation.⁴⁶⁴ The perpetration of such activity does not respect the principle of proportionality, therefore it might be qualified as a Starvation crime. Compliance with these fundamental IHL principles will need to be taken into consideration as a first step in disentangling intent during situations where military and civilian objects are close to one another and difficult to differentiate.⁴⁶⁵ The compliance of the Republic of South Sudan to the aforementioned Conventions and to its domestic law, underlines the systematic violation, during the civil war, of the principles and provisions provided by such body of laws.⁴⁶⁶

In the framework of the prosecution of Mass Starvation, once the actus reus is detected, it is necessary to demonstrate that the perpetrator had the direct intention (mental element) to starve civilians as a war tactic.⁴⁶⁷ This means that the prosecutor must prove, beyond any reasonable doubt, that the perpetrator used Starvation as a method of warfare either intentionally or had the awareness that his/her conduct, in the natural course of the events, would result in starving the civilian population.⁴⁶⁸ For instance, the demonstration of the mental element is satisfied when the perpetrator deprived civilians of objects indispensable for their survival with the goal of strengthening its military capacities, to obtain military advantage or to lessen the opposition's capacity of responding to the attacks.⁴⁶⁹

In the course of the civil war and also after the cease fire of 2018, several reports provide evidence of Starvation inflicted as a method of warfare.⁴⁷⁰ The government forces often deprived civilians who lived in the areas containing crucial resources, this was done through the systematic pillaging, destruction and looting of agriculture fields, water pumps, livestock and livelihoods.⁴⁷¹ As a result, the civilians who lived in these areas, escaped in nearby villages or towards safer zones. As they escape, the government forces chased and shot them. Moreover, during the conflict, significant

⁴⁶⁴ API I, Art. 54 (3)(b).

⁴⁶⁵ B. Conley, A. De Waal, C. Murdoch, W. Jordash QC, see SUPRA note 3.

⁴⁶⁶ See Chapter II.

⁴⁶⁷ Rule 53 and 54 of API, Customary IHL.

⁴⁶⁸ Article 54 (1)(API), Article 14 (APII), Customary IHL, Art. 8 (2)(b)(xxv) Rome Statute.

⁴⁶⁹ M.J. Ventura, 'Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities (Journal of International Criminal Justice, 2019); B. Conley, A. De Waal, 'The Purposes of Starvation: Historical and Contemporary Use' (Journal of International Criminal Justice, 2019).

⁴⁷⁰ For instance, 'January 2020 Report of the Commission on Human Rights in South Sudan' (HRC, 2020); 'Report of the Commission on Human Rights in South Sudan' (HRC, 4 February 2021); 'Conference Room Paper' (HRC); 'Letter dated 14 April 2021 from the Panel of Experts on South Sudan addressed to the President of the Security Council' (UNSC Panel of Experts, 14 April 2021); 'Letter dated 28 November 2022 from the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206 addressed to the President of the Security Council' (S/2022/864, UNSC 2022).

⁴⁷¹ 'February 2019 Report the Commission on Human Rights in South Sudan' (HRC).

attacks were directed against hospitals, medicine stores, civilian houses and pillaged the supplies (of food, vehicles, generators) of several NGOs.⁴⁷² According to a report of the UN's Panel of Experts for South Sudan,⁴⁷³ the goal of these military campaign was to regain the control over areas considered crucial for the regime's survival and for the countries' economy. Annihilate the opposition's resistance through the systematic destruction of villages and towns. During these operations, besides the infliction of Starvation, the commission of numerous brutal crimes has been recorded, especially murders, rapes, abductions, pillage and destruction of property.⁴⁷⁴ The sum of all of these factual elements may be used prosecution could use to prove that hunger was used as a tactic of war in South Sudan.

The activities previously mentioned and the context in which they occurred, are sufficient to establish the nexus between the deprivation of civilian OIS and the armed conflict, hence it is reasonable to frame such actions as methods of warfare by the government forces.⁴⁷⁵ However, since South Sudan is an area already that may be exposed, due to natural climate conditions, to harsh situations of food insecurity. The prosecution must focus in distinguishing the causes that determined Starvation. For instance, in the area of Jonglei, abnormal heavy rains, droughts and floods impacted calamitously on the seasonal agricultural production, lessening the food supplies available.⁴⁷⁶ The natural catastrophes, together with the inflation of prices due to the COVID-19 pandemic, resulted in worsening the civilians life conditions during the civil war. However, the government forces deprived civilians of OIS⁴⁷⁷ in concomitance with these natural causes, resulting in inflicting severe conditions of famine towards the South Sudanese population.

To demonstrate the intention to starve, evidence, which can be either direct or indirect, is essential. However, by the time of writing, there does not seem to be direct evidence⁴⁷⁸ in the public domain proving the intention to starve during the South Sudanese civil war. On the other hand, indirect evidence could be obtained through an analysis of the contextual circumstances concerning the

⁴⁷² 'There is nothing left for us: Starvation as a method of warfare in South Sudan', 'HRC Conference Room Paper' (A/HRC/45/CRP.3, 5 October 2020).

⁴⁷³ 'Letter dated 21 August 2015 from the Panel of Experts on South Sudan established pursuant to Security Council 2206 (2015) addressed to the President of the Security Council (S/2015/656, 21 August 2015).

⁴⁷⁴ 'Indiscriminate attacks against Civilians in southern Unity April-May 2018 (UNMISS, UNOHC); UNSC, S/2022/884 (1 December 2022) ; UNSC S/2021/365 (15 April 2021); HRC A/HRC/46/53 (4 February 2021); UNSC S/2022/918 (7 December 2022); UNSC S/2022/689 (13 September 2022); UNSC S/2022/468 (9 June 2022).

⁴⁷⁵ B. Conley, A. De Waal, SUPRA note 35.

⁴⁷⁶ 'Detailed Findings of the Commission on Human Rights in South Sudan', HRC (A/HRC/46/CRP.2, 18 February 2021); 'January 2020 Report of the Commission on Human Rights in South Sudan' (HRC, 2020).

⁴⁷⁷ 'Armed Violence involving community-based militias in Greater Jonglei, January – August 2020' (UNMISS and UNHROHC, March 2021), available at: <https://www.ohchr.org/sites/default/files/Documents/Countries/SS/Jonglei-report.pdf>.

⁴⁷⁸ For instance, video or digital evidence, audio recordings, written orders.

deprivation of objects indispensable for the civilians' survival. As already discussed,⁴⁷⁹ this kind of activity must piece together:

- Perpetrator's acts or omissions generated the deprivation of OIS;
- How the deprivation was committed;
- The disrespect and negligence of obligations deriving from International Humanitarian Law;
- The fact that no efforts were made for lessening the calamitous effects suffered by the civilians,
 - The perpetrator's awareness that his acts or omissions would most likely lead to Starvation in the ordinary course of the events.⁴⁸⁰

Another important element that must be considered for establishing the intention to starve is the modus operandi of the deprivation. The evidence available, demonstrates that deprivation of OIS occurred with the commission of frequent and systematic attacks, neglecting the legal responsibilities determined by the IHL and ICL provisions, thus, resulting in the commission of several crimes against humanity and war crimes.⁴⁸¹ For instance, during the conflict in the Wau County in 2016, the government forces constructed boundaries with the objective of avoiding the trading of food by civilians.⁴⁸² Another example in this sense, occurred in the course of the offensives towards Mboro in 2018⁴⁸³, the SPLA forces attacked repeatedly the water pumps that were used by the locals, resulting in the deprivation of water for the civilians' consumption and sanitation.⁴⁸⁴ As discussed before, analyzing the time when the offensives occur may be a useful tool in establishing the perpetrator's intent. For example, the military campaign conducted in the Unity State (mostly in the Leer and Mayendit Counties) and in the Wau County, occurred during the planting and harvesting season.⁴⁸⁵ Moreover, severe restrictions were imposed to the locals living in the areas that were under the

⁴⁷⁹ See Chapter II.

⁴⁸⁰ N. Melzer, G. Gaggioli, 'Methods of Warfare' (Oxford Guide to International Humanitarian Law, Oxford University Press, 2019); D. Akande, E.C. Gillard, 'Conflict Induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare' (17 Journal of International Criminal Justice, 2019).

⁴⁸¹ Indiscriminate attacks against Civilians in southern Unity April-May 2018 (UNMISS, UNOHC).

⁴⁸² 'There is nothing left for us: Starvation as a method of warfare in South Sudan', 'HRC Conference Room Paper' (A/HRC/45/CRP.3, 5 October 2020).

⁴⁸³ According to the 'HRC Conference Room Paper' (SUPRA note 482), *'Pro-Government forces carried out a strikingly similar pattern of attack in Mboro as they had in Wadhalelo, whereby armed soldiers did not discriminate between SPLA-IO (RM) fighters and civilians, pillaged objects indispensable to the survival of the civilian population including sacks of grain from civilian homes (tukuls), and then set the tukuls on fire. Satellite imagery analysis showed that at least 200 structures scattered across Mboro town were either damaged or destroyed during the offensive.'*⁴⁸³ Civilians including women and children recalled having to flee to the bush to hide'.

⁴⁸⁴ See SUPRA note 125.

⁴⁸⁵ Amnesty International: 'We are Still Running: War Crimes in Leer, South Sudan', available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6544862016ENGLISH.pdf>; Indiscriminate attacks against Civilians in southern Unity April-May 2018 (UNMISS, UNOHC); 'There is nothing left for us: Starvation as a method of warfare in South Sudan', 'HRC Conference Room Paper' (A/HRC/45/CRP.3, 5 October 2020); 'February 2019 Report the Commission on Human Rights in South Sudan' (HRC, 2019).

control of the government forces. This resulted in forbidding civilians from farming their lands and producing food, in a period that was crucial for their survival.⁴⁸⁶

During the armed conflicts, the International Humanitarian Law requires the parties involved to ensure and facilitate the humanitarian relief operations for all the civilians in need.⁴⁸⁷ The restriction of humanitarian access is not only forbidden by the IHL, but it also constitutes a Starvation crime.⁴⁸⁸ In this sense, proving that the accused repeatedly refrained the civilians from having access to humanitarian operations or impeding the humanitarian relief personnel to reach the civilians in need, would provide a clear proof of the intention to starve the civilians population. In the context of South Sudan, the armed conflict and the climate conditions rendered the Humanitarian operations vital for the civilian lives. Several humanitarian initiatives, for instance the Operation Lifeline Sudan (OLS),⁴⁸⁹ have been frequently interfered or impeded⁴⁹⁰ by the factions involved in the conflict, resulting in a total failure of avoiding Starvation.⁴⁹¹ The interference with the humanitarian operations was carried out through the use of violence directed against the humanitarian operators, assets and supplies. To impede the humanitarian aid, movement restrictions were imposed to these organizations and to its personnel.⁴⁹² For example, the humanitarian organizations aiding in the area of the Wau Triangle (Western Bahr el Ghazal) were subjected to strict restriction movements, impeding them to assist the civilians in need.⁴⁹³ Similar situations were reported in the Akobo County and Jonglei State, where government forces systematically denied the movement and the transportation of food and medicines through the construction of on-road checkpoints, resulting in severe deprivation for the civilians who lived under the control of the opposition forces.⁴⁹⁴ Further violations were detected in the Unity State, where in the Waat Village, SPLA and affiliated forces pillaged the properties and

⁴⁸⁶ See SUPRA note 127.

⁴⁸⁷ ICRC Customary International Law; J.M. Henckaerts, L.Doswald Beck, 'Customary International Humanitarian Law Vol.1'(Cambridge University Press, 2005).

⁴⁸⁸ Art. 8 (2)(b)(xxv) Rome Statute.

⁴⁸⁹ A. Karim, 'OLS Operation Lifeline South Sudan – A review' (UNICEF 1996), available at: <https://www.csrf-southsudan.org/wp-content/uploads/1996/07/1996OLSReview.pdf>.

⁴⁹⁰ The UN Office for the Coordination of Humanitarian Affairs reported over 5,900 humanitarian access incidents since the eruption of the civil war in 2013.

⁴⁹¹ United Nations Office for the Coordination of Humanitarian Affairs, 'South Sudan: Humanitarian Access Situation Snapshot (January-December 2016)', available at: <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-access-situation-snapshot-jan-dec-2016>.

⁴⁹² United Nations Office for the Coordination of Humanitarian Affairs, '2014 Humanitarian Needs Overview South Sudan' (September 2013), 'February Report the Commission on Human Rights in South Sudan' (HRC).

⁴⁹³ See SUPRA note 491.

⁴⁹⁴ SUPRA note 491, para. 107: '*Aside from blocking traders and businesspersons from transporting vital foodstuffs and medicine into Akobo, Government forces have also systematically restricted humanitarian actors from bringing food into Akobo via road. In April 2017, for example, Government forces stopped a convoy that was transporting food to Akobo and looted the food on-board*'.

looted from the food compounds of international NGOs.⁴⁹⁵ The strategies of obstructing and interfering with the humanitarian relief operations certainly do not comply with the International Humanitarian Law. These kinds of acts, carried out during the conflict, constitute grave violations of the Rule 55⁴⁹⁶ and Rule 88 of the Customary International Law.⁴⁹⁷ These principles impose to the parties involved in an armed conflict the obligation to allow and facilitate the passage of humanitarian operations, without discrimination, for the purpose of helping the ones suffering. In addition, beside IHL, these activities constituted grave breaches of the obligations deriving from the Cessation of Hostilities Agreement of 2017 and the Revitalized Agreement on the Resolution of the Conflict in South Sudan (2018), which obliged parties to assist the progress of humanitarian aid and to protect and guarantee the security of the humanitarian operators.⁴⁹⁸ The violation of the principles of the IHL and of the obligations provided by these two agreements may indirectly suggest the perpetrator's intention to starve. As reported by the 'January 2020 Report of the Commission on Human Rights in South Sudan', the denial of humanitarian access and the displacement caused significant famine in several parts of South Sudan, depriving hundreds of thousands of civilians in need.⁴⁹⁹

With reference to the opportunities of prosecution, one way of demonstrating the intention to starve is proving the perpetrator's awareness that his actions would lead to Starvation or famine in the ordinary course of the events.⁵⁰⁰ In this sense, in consideration of the widespread food crisis occurring in South Sudan and the declaration of famine in 2017,⁵⁰¹ it is unreasonable to believe that the leaders of the parties involved in the conflict were not aware that their actions would lead to Starvation.

Although it is difficult to determine the exact number of victims, studies and reports estimated that nearly four hundred thousand people died because of the civil war, and a significant part of these

⁴⁹⁵ SUPRA note 491, para. 100: '*Attacks against civilian property included attacking the compounds of at least four international non-governmental organisations. These operations were further characterized by the looting of these and other properties, including of generators, vehicles, and food stores from humanitarian compounds such as nutritional items from an international non-governmental organization warehouse.*⁴⁹⁵ Government forces also destroyed hospitals, medicine stores, and beds'.

⁴⁹⁶ Customary International Humanitarian Law, Rule 55: Access for Humanitarian Relief to Civilians in Need, which states: '*The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control*'.

⁴⁹⁷ Customary International Humanitarian Law, Rule 88, which states: '*Adverse distinction in the application of international humanitarian law based on race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited*'.

⁴⁹⁸ Article 4, Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access (2017), which states: '*The parties shall open humanitarian corridors, support all humanitarian assistance, including the creation of conditions to enhance urgent supply of aid to all displaced populations...*'.

⁴⁹⁹ UNCHRSS, 'January 2020 Report of the Commission on Human Rights in South Sudan'.

⁵⁰⁰ See SUPRA note 25.

⁵⁰¹ According to the IPC, the WFP, FAO and UNICEF, in 2017 about 4,9 million people in South Sudan (more than 40% of the total population) were in urgent need of nutrition assistance.

deaths was caused by the total lack of food, displacement and interruption of health facilities.⁵⁰² Moreover, the armed conflict provoked the displacement and migration of over four million people, resulting in a critical issue that will need the desperate attention of the international community.⁵⁰³

In light of these factors, an analysis of the activities perpetrated in South Sudanese suggest that the offenders may have had the desire to starve their victims. Attacks, pillage, besiegement, blockades, and the destruction of the OIS on a regular basis, without any apparent rationale and without any attempt of alleviating the civilian suffering, express powerfully the perpetrator's mental element. Furthermore, the manner in which the deprivation was conducted, in consideration of the various attacks and harms directed against the civilians, appears to be systematic, widespread and prolonged. Moreover, the deprivation of OIS occurred during the commission of other serious breaches of IHL, such as sexual violence, murder, torture, forced displacement and pillage of property. These elements appear to reveal that there was an actual coordination and method in the attacks directed against civilians and objects indispensable for their survival.

⁵⁰² F. Cecchi, 'Estimates of Crisis-Attributable Mortality in South Sudan, December 2013-April 2018' (London School of Hygiene and Tropical Medicine, 2018), available at: <https://www.lshtm.ac.uk/south-sudan-full-report>; 'More than 1,000 killed in six months in South Sudan' (Aljazeera, 17 November 2020), available at: <https://www.aljazeera.com/news/2020/11/17/un-says-over-1000-killed-in-six-months-in-s-sudan>; M. Specia, '383,000: Estimated Death Toll in South Sudan's War' (The New York Times, 26 September 2018).

⁵⁰³ 'Civil War in South Sudan', Center for Preventive Action (Global Conflict Tracker, May 12, 2022), available at: <https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan>.

CONCLUSION

The deliberate infliction of Starvation, which has been carried out for ages as a weapon of war to defeat the enemy or to punish its people, has been often concealed or misclassified as a side effect of natural events. As demonstrated by the atrocities occurred in Yemen, Syria and South Sudan, Starvation is inferred usually in countries that present a high level of food instability, malnutrition or disease that either already existed or were partially provoked by concurrent economic crises. The cumulus of these factors has often persuaded international prosecutors to criminalize the perpetrators of other crimes that are usually committed alongside Starvation. Despite the fact that Starvation has never been prosecuted as a distinct crime before International Courts but has been solely considered as a contextual element for the prosecution of other crimes, the international arena is slowly recognizing the urgency of settling legal adjustments for preventing the commission of such crime and protecting the vital right to food. Apart from the Rome Statute, which provides the legal foundation for the prosecution of Starvation as a war crime during international armed conflicts, the adoption of the UN Security Council of Resolution No. 2417 on the Protection of Civilians in Armed Conflict (2018) and the recent extension of the Rome Statute's jurisdiction in the South Sudanese case, indicate a change of view in understanding the need to label Starvation appropriately.

The history of international criminal law demonstrates that legal responsibility alone will not be sufficient to stop the deliberate infliction of Starvation in the future, neither provides adequate justice for the victims. Yet, as the public awareness of the intentional use of Mass Starvation seems to be increasing, there might be chances of focusing on its distinct prosecution, shifting such crime from the margins of prosecutorial practice. However, further political, economic, health and education efforts are still required, both at national and international level. In light of the catastrophic effects that Starvation has over its victims and of the several challenges associated with its prosecution, major efforts could be made to prevent its commission or to significantly lessen its consequences. Thus, it will be helpful to improve the delivery of information regarding this issue alongside with the introduction of further strict measures and laws criminalizing its use by the States and the International Community. This could be done with the improvement of the collaboration and coordination between the activities undertaken by Institutions providing data concerning food insecurity, the Humanitarian Organizations and States. For instance, in relation to the IPC scale, the effectiveness of the information provided depends on the availability of certain resources. In fact, it may happen that the area suffering food crisis does not have the appropriate skill sets required to support efficiently the use of the IPC in such area. Thus, it appears crucial to ensure that the required resources are accurately identified during the planning stages and that solutions are sought for any kind of significant shortfall. In this sense, an appropriate compliance with the Governments involved

and International Organizations would result beneficial for shaping responses to such problem. As demonstrated by the UN in the conflicts of South Sudan and Yemen, this could be done, with the implementation of further International Agencies or Panels of Experts in the areas suffering food insecurity, for the purpose of assisting the victims and accurately gathering impartial data that might result essential for prosecuting the perpetrators. This kind of cooperation is vital for avoiding famine and malnutrition, when States are unable, on their own, to protect and respect the correct realization of the right to food.

With regard to the provision of aid to the ones suffering malnutrition, the prompt delivery of further substantial resources (*i.e.*, the construction of health, food and water facilities, or the renovation of the ones already present in the territory, the shipment of pharmaceuticals and foodstuffs, the sharing of new agriculture techniques to face famine) by national leaders and humanitarian actors would result a vital tool for the fight and prevention of hunger. Moreover, efforts could be directed to improve the agrarian systems of the countries suffering famine or the aftermath of Starvation, by improving methods of production, conservation and distribution of food, developing and reforming agrarian systems to achieve the most efficient usage of natural resource, or equitably ensure the distribution of world food supplies in consideration of the need.

Furthermore, since Starvation generally occurs in areas suffering extreme poverty and in consideration of the fact that most victims are children and women, support programs could be organized to recover their conditions (*i.e.*, the institution of free schools, centers for the rehabilitation of the victims, centers providing free meals). In addition, as well as the aforementioned activities, it would also result valuable the promotion and protection of the right to food. Considering the right to food as a fundamental human right, entails the necessity of adopting further legal frameworks that can identify and counter food insecurities at all levels. This implies listening to the voices of the victims and the marginalized, defining roles and responsibilities, and creating mechanisms for the public to hold perpetrators accountable. At last, to avoid Starvation and to secure the effective respect of the right to food, States should periodically review their national programmes and legislations. To do so, they shall also formulate mechanisms providing legal remedies for possible breaches. In particular, it would result constructive for the protection of the right, the establishment of institutional practices enabling the coordination of different social and economic sectors for the complete realization of the right.

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