STARVATION AND INTERNATIONAL CRIME

HAMBRE Y JUSTICIA INTERNACIONAL

Tom Dannenbaum
Associate Professor of International Law, Fletcher School of Law & Diplomacy, Tufts University
tom.dannenbaum@tufts.edu

Fecha recepción artículo: 18/07/2023 • Fecha aprobación artículo: 31/08/2023

ABSTRACT

One of the most pernicious causes of the backsliding on global hunger is the human infliction of deprivation, whether in the form of belligerents' decisions about how to wage war or governments' decisions about how to exercise control over populations. Some of these decisions are criminal, but accountability is rare. Change requires building the confidence of prosecutors and investigators in the viability of the legal tools available, despite the relative graduality of the effects of deprivation as compared to other atrocity crimes, the challenges associated with establishing the cause of those effects in complex and multivariate conditions, and the fact that many of those subject to mass deprivation endure torturous suffering without dying. Given that context, the agents of international criminal accountability would do well to focus on the war crime of starvation of civilians as a method of warfare and the crime against humanity of "other inhumane acts." This article explains why those crimes are most expressively and evidentiarily apt and charts the contours of the relevant law.

Keywords: International criminal law, Starvation, Deprivation, War crimes, Crimes against humanity, Genocide

RESUMEN

Una de las causas más perniciosas del retroceso del hambre en el mundo es la imposición humana de privaciones, ya sea en forma de decisiones de los beligerantes sobre cómo hacer la guerra o de decisiones de los gobiernos sobre cómo ejercer el control sobre las poblaciones. Algunas de estas decisiones son delictivas, pero la rendición de cuentas es escasa. El cambio requiere fomentar la confianza de fiscales e investigadores en la viabilidad de las herramientas jurídicas disponibles, a pesar de la relativa gradualidad de los efectos de las privaciones en comparación con otros crímenes atroces, de los retos asociados a establecer la causa de esos efectos en condiciones complejas y multivariables, y del hecho de que muchas de las personas sometidas a privaciones masivas soportan un sufrimiento tortuoso sin morir. En este contexto, los agentes

responsables de la rendición de cuentas internacional deberían centrarse en el crimen de guerra de hacer padecer hambre a la población civil como método de guerra y en el crimen de lesa humanidad de "otros actos inhumanos". Este artículo explica por qué esos crímenes son los más aptos desde el punto de vista expresivo y probatorio y traza los contornos de la legislación pertinente.

Palabras clave: Derecho penal internacional, Hambre, privación, Crímenes de guerra, Crímenes de lesa humanidad, Genocidio

Tom Dannenbaum *is Associate Professor of International Law at the Fletcher School of Law & Diplomacy, where he is also Co-Director of the Center for International Law & Governance. He writes and teaches in the areas of international humanitarian law, the law governing the use of force, international criminal law, human rights, shared responsibility, and international judging. His articles have appeared in a range of leading journals and have received multiple awards, including the American Society of International Law's (ASIL) International Legal Theory Scholarship Prize in 2022 for his work on siege starvation and ASIL's Lieber Prize in 2017 for his work on the crime of aggression. Dannenbaum's book, The Crime of Aggression, Humanity, and the Soldier, was published by Cambridge University Press in 2018.*

INTRODUCTION

Sustainable Development Goal (SDG) 2 sets the objective of ending hunger and achieving food security. Given existing global resources, this ought to be the minimum we expect of one another. And yet, as outlined elsewhere in this issue, it is an increasingly distant ambition. Although there is no single explanation for this backsliding, armed conflict is clearly among the most devastating factors. In 2022, conflict drove acute food insecurity for 117 million people and catastrophic food insecurity for 648,000, with Ethiopia, Nigeria, South Sudan, and Yemen each at risk of conflict-induced famine (Report of the Secretary-General, 2023, para. 73). The situation in 2023 continues to deteriorate, with the outbreak of war in Sudan a new driver of acute hunger (Food and Agriculture Organization & World Food Programme, 2023, pp. 3, 6–7, 27). In many conflicts, those suffering from the deprivation of food and other essentials far outnumber those that have endured the higher-profile harms arising from kinetic attacks and detainee mistreatment.

These effects are not simply the inevitable collateral consequence of war. They are the products of belligerents' choices about how to fight. However, despite both the prominence of war as a driver of acute food insecurity and the fact that civilian deprivation is among the most devastating features of contemporary armed conflict, it is only recently that starvation tactics have drawn legal attention as possible war crimes (Akande & Gillard, 2019; Bartels, 2015; Coco et al., 2019; Conley & de Waal, 2019; Cottier et al., 2022; D'Alessandra & Gillett, 2019; Dannenbaum, 2022a, 2022b; de Waal, 1997, 2018; Defalco, 2017; Jordash et al., 2019; Marcus, 2003; Mulder & van Dijk, 2021; Van Schaack, 2016; Ventura, 2019; Zappalà, 2019). They have yet to be prosecuted as such at the international level. For a period, this omission could be explained by uncertainty as to the applicable law. Today, however, international law prohibits and criminalizes the starvation of civilians as a method of warfare, while offering special protection to objects indispensable to civilian survival, such as food and water. In confronting the accountability gap, what is needed is not new law, but the interpretive clarity, prosecutorial confidence, and political will to employ existing tools.

In fact, that imperative can be articulated in more general terms. War crimes apply only in contexts of armed conflict or belligerent occupation. However, certain decisions leading to large-scale deprivation outside of war may implicate the distinct international criminal categories of crimes against humanity or genocide, for which no belligerent nexus is necessary. Here, too, existing law has been underused, with prosecutors seemingly more hesitant in responding to the slow violence of inadequate access to essentials than they are in responding to the instantaneous, and consequently more "spectacular," atrocities that are the focus of most international criminal cases (DeFalco, 2021; Kalpouzos & Mann, 2015).

Many crimes are potentially implicated in contexts of mass deprivation. However, given both the value of expressive specificity in international criminal law and the evidentiary challenges associated with prosecuting starvation, this analysis focuses on those rules most apt for pursuing accountability for the starvation of populations.

WHAT IS INTERNATIONAL CRIMINAL LAW?

Before turning to those details, it is necessary to introduce the context. International criminal law identifies wrongs to which individual criminal liability can attach at the international level, whether before an international (or internationalized) court or tribunal, such as the International Criminal Court (ICC), or before a domestic court exercising universal jurisdiction. In principle, regardless of forum, the prosecution of individuals for such crimes entails the condemnation and non-acquiescence of the international community. International crimes have no statute of limitations.

The ICC is the only permanent international court in this domain. It has ordinary jurisdiction over crimes perpetrated either on the territory or by the nationals of a state that has either ratified the ICC Statute or issued an ad hoc declaration accepting the Court's jurisdiction (Statute of the ICC, art.12). The Court can gain jurisdiction in a situation not meeting those criteria if the United Nations Security Council refers the situation (as it has done with respect to Darfur and Libya) (Statute of the ICC, art. 13(b); UN Security Council Res. 1593, 2005, para. 1; UN Security Council Res. 1970, 2011, para. 4). Situation-specific courts, such as the International Criminal Tribunals for Yugoslavia and Rwanda (ICTY, ICTR), the Special Court for Sierra Leone (SCSL), and the Extraordinary Chambers in the Courts of Cambodia (ECCC), among a growing number of others, have been set up on an ad hoc basis, either through agreement between an international organization and a state with jurisdiction or through Security Council action.

Domestic courts' jurisdiction is defined by national law. However, as applied to international crimes, there is relatively broad recognition of states' authority to assert one or another form of universal jurisdiction—jurisdiction that is not contingent on any territorial or nationality link to the impugned act or its consequences—albeit with enduring controversies and complexities regarding political conditions and the selectivity of its use in practice (Amnesty International, 2012; Jalloh, 2018; Trial International, 2023).

To focus on international criminal law in analyzing the ongoing regression vis-à-vis SDG 2 is not to suggest that criminal justice is the key to reversing world hunger. The relevant criminal categories have high (and in some cases uncertain) legal thresholds. Effective investigation is often contingent upon the cooperation of states whose leading officials are potentially implicated in the wrongdoing. And, although the war in Ukraine has prompted unprecedented transnational investigative engagement, the durability and scope of that effect beyond the Ukrainian context remains to be seen (Dutton & Sterio, 2022; Vasiliev, 2022). At most, the pursuit of criminal accountability can be one limited element in a multidimensional effort.

Even assuming effective investigation and case processing, the unreflective introduction of international criminal law into a situation can be counterproductive, prompting belligerents to deny humanitarian access punitively or complicating prospects for peace, albeit that these effects are more nuanced and case-specific than is often asserted (Kersten, 2016; Rice & Branigan, 2009). In these and other respects, it is important to retain critical perspective on the role and utility of the criminal frame.

Nonetheless, there is both intrinsic and instrumental value in asserting through law the moral toxicity of the infliction of starvation conditions and in clarifying the ways in which accountability can be pursued (de Waal, 2018). The gradual and distinct nature of starvation methods entails a particular form of individually and socially torturous wrong—one that can only be adequately identified and expressed through accountability for starvation-specific crimes (Dannenbaum, 2022b).

STARVATION AS A VIOLATION OF THE LAW OF ARMED CONFLICT AND A WAR CRIME[1]

In armed conflict or belligerent occupation, the deprivation of objects indispensable to civilian survival, such as food, water, and the systems through which they are sourced implicates both the law of armed conflict (also known as international humanitarian law (IHL)) and the war crimes regime that is derivative of it. To evaluate the nuances of this framework with precision, it helps to begin with the underlying IHL before turning to war crimes.

Here, one might distinguish two salient components of the law: the protection of objects indispensable to civilian survival from certain specified operations and the prohibition of starvation of civilians as a method of warfare. As will become clear, the better view is that these are in fact intimately intertwined, with starvation of civilians as a method of warfare defined by the deprivation of objects indispensable to civilian survival. However, because there are other ways of understanding the relationship, the two components require separate introduction.

OBJECTS INDISPENSABLE TO CIVILIAN SURVIVAL

The heightened protection of objects indispensable to civilian survival is best understood in contrast with IHL's posture on objects generally. Ordinarily, an object with both military and civilian uses—a so-called "dual-use object"—is considered a military objective whenever the former use entails an "effective contribution to military action," such that the object's destruction, capture or neutralization would return a definite military advantage (Dinstein, 2022, pp. 140–141; AP I, 1977, art. 52). As such, it is, in principle, a lawful target. Its value to civilians is protected instead through belligerents' obligations to take all feasible precautions to minimize civilian harm in any operation against the object (AP I, 1977, art. 57(2)(a)(ii)) and not to attack if the civilian harm expected would be excessive in relation to the concrete and direct military advantage anticipated (AP I, 1977, arts. 51(5)(b), 57(2)(a)(iii)).

Objects indispensable to survival, such as food, water, and the systems through which they are sourced and provided are governed by a different framework. Per the terms of Protocol I Additional to the Geneva Conventions (Additional Protocol I or AP I), even if such objects are used not just by civilians, but also by

[1] In more detail, see: Dannenbaum, T, 2022a; Dannenbaum, T, 2022c.

Starvation and International Crime. Tom Dannenbaum.
Revista DIECISIETE. 2023. Nº 9. Madrid. ISSN 2695-4427 Versión digital (pp. 135-156) DOI: 10.36852/2695-4427_2023_09.07

combatants, two bright-line prohibitions still apply to their attack, destruction, removal, or rendering useless. A good argument can be made that these prohibitions apply not only in Protocol I conflicts (i.e. armed conflicts between two of the 174 states that are party to AP I), but also to other conflicts as a matter of customary international law (Dannenbaum, 2022a, pt. III). Moreover, as detailed below, on the better interpretation, such heightened protections apply not only to attack, destruction, removal, and rendering useless, but also to other forms of deprivation, including encirclement operations that cut civilians off from the external supply of such objects.

The first elevated prohibition is specific to operations that target indispensable objects for their sustenance value. Pursuant to paragraphs 2 and 3(a) of article 54 of Protocol I, objects indispensable to survival cannot be targeted for their sustenance value (including their sustenance value to adversary forces), unless they provide sustenance *exclusively* to combatants (AP I, 1977, arts. 54(2), 54(3)(a)). In other words, in contrast to dual-use objects, dual-use sustenance is not a lawful target. This prohibition holds whether or not the targeting operation would leave the civilian population inadequately supplied and regardless of the motive for denying sustenance. It inheres simply in the fact of sustenance denial as the purpose in a context in which civilians are among those affected.

Second, pursuant to paragraph 3(b) of article 54, objects indispensable to civilian survival may be targeted for reasons *other* than their sustenance value only if both of two cumulative criteria obtain (AP I, 1977, art. 54(3)(b)). First, the objects must provide "direct" support for military action. Tighter than the "effective contribution to military action" test that ordinarily determines objects' target status (AP I, 1977, art. 52(2)), this may require that the contribution be no more than one causal step from military action (AP I, 1977, art. 51(3); Melzer, 2009, pp. 52-54). A paradigmatic example is a food-storage barn used for cover by hostile forces (Sandoz et al., 1987, para. 2110). Second, and critically, even when that direct support threshold is satisfied, targeting the object would be lawful only if not expected to leave the civilian population starving or forced to move.

These two alternative prohibitions—(i) on dual-use sustenance denial and (ii) on actions that would leave civilians starving or forced to move—specify the unique protection of indispensable objects even when they provide significant military utility. Crucially, these prohibitions attach prior to the IHL evaluations of proportionality and precautions—i.e., *regardless* of how expected civilian loss compares to anticipated military advantage and *whether or not* all feasible measures were taken to minimize civilian harm. Moreover, under the first prohibition, operations can be identified as illegal without needing to establish that they caused (or were anticipated to cause) a particular effect among civilians.

The distinction between the two prohibitions relating to indispensable objects implies that food, water, and the systems by which they are produced and supplied should be understood to be intrinsically indispensable, regardless of their scarcity or not in the situation at hand. Indeed, one of the key virtues of the first rule's purposive focus is precisely that it captures acts of sustenance denial undertaken *before* the relevant objects are scarce. Under the second prohibition, on the other hand, the anticipated impact matters. However, even in that context, it is necessary only to show that the impugned operation would be expected to leave the population in starvation conditions (or require its movement), not that the belligerent party caused the conditions of scarcity underpinning that vulnerability. Thus, despite recognizing the significance of floods, the COVID-19 pandemic, reduced farming, displacement, and donor fatigue in contributing to starvation conditions in South Sudan (Commission on Human Rights in South Sudan, 2020a, paras. 12–15, 102, 103, 110, 117–122, 135), the Commission on Human Rights in South Sudan stressed that such conditions underscore (rather than mitigate) the obligation of belligerents not to deprive the affected populations of objects essential to their survival (Commission on Human Rights in South Sudan, 2020a, paras. 101, 128–31, 103, 109; Commission on Human Rights in South Sudan, 2020b, paras. 70–71, Annex II: 40-41).

STARVATION OF CIVILIANS AS A METHOD OF WARFARE

This much is clear as applied to the modes of deprivation listed in article 54(2) of Protocol I (attack, destruction, removal, and rendering useless), each of which has occurred in multiple recent conflicts and in multiple forms, ranging from *attacks* on agricultural areas, markets, and humanitarian convoys, to the *destruction* of livestock, crops, agricultural equipment, and water infrastructure, the looting or other *removal* of essential goods from farms and markets, and the mining (and thus *rendering useless*) of agricultural fields (Conley et al., 2022; Dannenbaum, 2022a, pp. 685–686; Dannenbaum, 2022c). A question arises, however, regarding modes of deprivation not enumerated in article 54(2). Most prominently, this raises the issue of encirclement starvation, whereby civilians are cut off from the external supply of such objects through siege or blockade (Dannenbaum, 2021; Dannenbaum, 2022b; Drew, 2019; Gillard, 2019; Gaggioli, 2019; Nijs, 2021; Watts, 2019; Waxman, 1999). Not listed in article 54(2), such modes of deprivation are thought to be proscribed only under the general prohibition on using "starvation of civilians as a method of warfare" (codified in paragraph 1 of article 54) (Akande & Gillard, 2019, pp. 761–765). Here, there is more room for interpretive dispute. Three distinct approaches can be identified: the weaponized civilian suffering approach, the transitive deprivation approach, and the targeted deprivation approach. The first of these is the least plausible. Each of the second and third has merit.

On the first "weaponized civilian suffering" view, the general prohibition on using "starvation of civilians as a method of warfare" is thought to ban only deprivation inflicted with the specific purpose of causing civilians to suffer (most obviously with a view to breaking their will) (Akande & Gillard, 2019, pp. 761-765; Independent International Fact-Finding Mission on Myanmar, 2019, para. 420; Office of the General Counsel [US DoD], 2023, §§ 5.20.1, 17.9.2.1; Sandoz et al., 1987, para. 2089; United Kingdom Ministry of Defence, 2004, § 5.27.1; United Nations Commission of Experts, 1994, para. 76). While a distinct set of rules is elaborated for modes of deprivation listed in paragraph 2 of article 54, any other mode (such as encirclement) is proscribed only when it meets this purposive threshold. On this view, inflicting starvation conditions on a population of civilians and combatants with the goal of breaking the *combatants'* will would not be prohibited as such, because the foreseeable civilian starvation would not be the operation's purpose (Drew, 2019, p. 314; Watts, 2019, p. 19). This interpretation would apply a far narrower prohibition to unenumerated modes of deprivation than applies to those operations covered by paragraphs 2 and 3 of article 54. Depending on the standard by which the target of a deprivation operation is defined (discussed further below), it may also entail an evidentiary obstacle to the pursuit of accountability, as even many operations that would meet the legal standard in principle might be portrayed as targeted at combatants.

If this approach were adopted, a further interpretive question would be whether civilian starvation "incidental" to a siege would need to be weighed against the concrete and direct military advantage anticipated, per the general rule of proportionality (AP I, 1977, art. 51(5)(b)). The stronger argument is that it would, but the fact that the rule applies formally only to "attacks," raises the question of whether encirclements are covered (Akande & Gillard, 2019, p. 765; Gillard, 2019, p. 8; Gaggioli, 2019; Nijs, 2021; Watts, 2019, p. 19). In any event, given the potential gains from a successful encirclement, the proportionality rule may itself permit considerable civilian harm (Dannenbaum, 2021, pp. 338–341; Heintschel von Heinegg, 2016, p. 933; Watts, 2022).

A better interpretation would treat unenumerated modes of deprivation, such as encirclement, as no different from those listed in paragraph 2 of article 54 (Dannenbaum, 2022a, pt. V(D-F)). On this view, in specifying the prohibited method of warfare, the term "starvation" should be understood to refer not to an outcome, but to the transitive act of depriving people of indispensable objects (Conley & de Waal, 2022; de Waal, 2018, pp. 6, 22). Understood in this way, to engage in "starvation of civilians as a method of warfare" is to engage in the

deliberate deprivation of objects indispensable to civilian survival in furtherance of the war effort (Group of Eminent International and Regional Experts on Yemen, 2019, para. 741). That deprivation can be purposive in the way suggested by "method of warfare," without targeting civilians or being undertaken with the goal of weaponizing civilian suffering. Indeed, this is precisely the legal posture vis-à-vis attack, destruction, removal, and rendering useless per the terms of paragraphs 2 and 3 of article 54 (AP I, 1977, art. 54(2-3)). On this reading, those latter paragraphs specify the general ban through exemplification, while clarifying how it diverges from the article 52 framework on object protection. An alternative route to a similar conclusion would be to understand the concept of "rendering useless" more broadly than has sometimes been suggested (Sandoz et al., 1987, paras. 2100–2101), such that obstructing deliveries via encirclement would be a form of rendering those consignments useless to the civilians for whom they were destined.

Several factors weigh in favor of this "transitive deprivation" approach. First, it makes sense of the notion (expressed in the ICRC's Commentary on Protocol I) that the framework banning the attack, destruction, removal, and rendering useless of indispensable objects in paragraph 2 of article 54 "develops the principle formulated in paragraph 1" and "describes the most usual ways in which this [general principle] may be applied." (Sandoz et al., 1987, para. 2098). That framing would make little sense if the prohibition in paragraph 2 were understood to far exceed a narrowly defined purposive ban in paragraph 1. Second, this approach accounts for the structure of article 54, which is entitled "protection of objects indispensable to the survival of the civilian population" and which codifies the ban on "starvation of civilians as a method of warfare" in its first paragraph (thereby appearing to treat the two issues as mutually constitutive). Third, this makes sense of the focus on the deprivation of indispensable objects as the core material element of the war crime of starvation of civilians as a method of warfare (*Elements of Crimes* [ICC], 2013, p. 31), which is explicit in including willful encirclement denial as a form of prohibited deprivation (Statute of the ICC, art. 8(2)(b)(xxv)). Fourth, it is consistent with the U.N. Security Council's landmark Resolution 2417, which "strongly condemns … depriving civilians of objects indispensable to their survival, including willfully impeding relief supply and access" (UN Security Council Res. 2417, 2018, para. 6). Notably, "willfulness" (used in both the war crime and the Security Council resolution) is understood to describe "the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening" (*Prosecutor v. Galić*, 2006, para. 140; *Prosecutor v. Kvočka*, 2005, para. 261; *Prosecutor v. Strugar*, 2008, paras. 270, 277; Sandoz et al., 1987, para. 3474). Fifth, this approach avoids the normative incoherence of a strict ban on removing or rendering useless food or water and yet a permissive posture towards performing precisely the same function through blocking the delivery of such items.

Understanding the legal framework in this way would entail analyzing encirclement operations according to the following scheme. The first legal question would be whether the supply of indispensable objects is being deliberately blocked. If yes, the next question would be whether the purpose is to deny sustenance (even to combatants) in a context in which that denial will also impact civilians. If yes, the operation would be prohibited. On the other hand, in the case of a siege of a military holdout or base without a civilian presence, such as at Dien Bien Phu (Boylan & Olivier, 2018), the prohibition would not apply. Assuming access to be blocked for reasons other than sustenance denial, the alternative question—suggested by article 54(3)(b)—would be whether those other reasons include the prevention of direct support to military action, as might be true of agricultural equipment intended to be repurposed for military operations or of fuel or electricity that could be used for military purposes while also being necessary to the supply and preservation of food (*Al-Bassiouni v. Prime Minister*, 2008, para. 14; Sandoz et al., 1987, para. 4885). If such reasons do not obtain, the operation would be prohibited. Even if the denial of access were done for such permitted military purposes, the final question would be whether it would leave the civilian population starving or forced to move. If so, the operation would be prohibited.

A third approach ("targeted deprivation") would draw elements from each of the first two, understanding "starvation" to refer to the transitive act of deprivation, but reading the other terms in paragraph 1 of article 54 to limit the prohibition to deprivation targeted specifically at civilians. On this view, the ban on "starvation of civilians as a method of warfare" would attach at a higher prohibitive threshold than is applicable to the prohibitions on the attack, destruction, removal, or rendering useless of indispensable objects (which attach even when civilians are very clearly not the ultimate targets, as explained above). However, due to three features of civilian status and protection, it would avoid some of the difficulties associated with the first ("weaponized civilian suffering") approach (Dannenbaum, 2022a, pt. VI).

First, civilians who remain in a besieged area retain full civilian status and protection regardless of whether they refused safe exit or were forced to stay (AP I, 1977, art. 51(3); Dannenbaum, 2022a, pp. 744–745; Gillard, 2019, p. 12; Provost, 1992, p. 619). Second, a population composed predominantly of civilians has legal protection as a civilian population in its aggregate form, even when combatants are embedded within (AP I, 1977, art. 50(3); *Prosecutor v. Blaškić*, 2004, para. 115; *Prosecutor v. Galić*, 2006, paras. 135–138; *Prosecutor v. Karadžić*, 2016, paras. 474, 4610 n.15510; *Prosecutor v. Kordić and Čerkez*, 2004, paras. 50, 97). Third, the indiscriminate targeting of civilians and combatants in combination has been understood in war crimes case law to include the targeting of civilians in addition to the targeting of combatants (AP I, 1977, arts. 48, 51(4)(a-b), 51(5)(a); *Prosecutor v. Katanga*, 2014, paras. 801–802; *Prosecutor v. Ntaganda*, 2021, paras. 418, 424, 491; *Prosecutor v. Ntaganda*, 2019, paras. 921–923).

Given these features of civilian protection, a comprehensive starvation siege of a mixed civilian-combatant population would often be prohibited under the third interpretation, even if driven by the ultimate objective of starving out combatants. Pursuing that objective would entail adopting a prohibited predicate purpose as the means to that goal—namely, depriving the encircled population (as a whole) of essentials. In any scenario in which the population qualifies as civilian in aggregate (despite the presence of combatants), starving out those combatants would entail the targeted deprivation of a civilian population. Alternatively, the deprivation action in such a scenario might be deemed indiscriminate, and thus targeted at both combatants and civilians alike, regardless of ultimate motive. Either way, combatant starvation would be pursued (at least in part) via the targeted starvation of civilians as a method of warfare.

This analysis emphasizes the degree to which the scope of state responsibility for starvation in war hinges on how to define the prohibition of starvation methods in relation to the protection of objects indispensable to civilian survival. Albeit through different technical components, similar points of interpretive divergence extend through to the war crime.

STARVATION AS A WAR CRIME

As codified in Additional Protocol I, the starvation of civilians as a method of warfare was prohibited, but not criminalized (AP I, 1977, art. 85). That is to say, states were prohibited from using the method, and legally responsible for breaching that obligation, but they retained discretion as to the tools through which to suppress its use (AP I, 1977, art. 86(1)). The first unambiguous step towards international criminalization occurred two decades later with the codification of starvation of civilians as a method of warfare as a war crime in international armed conflicts (IACs) in article 8(2)(b)(xxv) of the ICC Statute in 1998 (Statute of the ICC, art. 8(2)(b)(xxv)). The Statute was amended in 2019 to extend the crime to non-international armed conflicts (NIACs) through article 8(2)(e)(xix) (ICC Assembly of States Parties, 2019b). IACs are conflicts between states (whether directly, or through proxies over which they exercise control). NIACs are conflicts of a certain level of intensity between states and organized armed groups, or between such groups.

Starvation and International Crime. Tom Dannenbaum.
Revista DIECISIETE. 2023. Nº 9. Madrid. ISSN 2695-4427 Versión digital (pp. 135-156) DOI: 10.36852/2695-4427_2023_09.07

ICC jurisdiction over the starvation crime in NIACs will apply only on a state-by-state basis, as each ratifies the amendment (Statute of the ICC, art. 121(5)). Nonetheless, here, too, there is a robust case for customary international criminality (Dannenbaum, 2022a, pt. III). Indeed, precisely that status was a central rationale for the statutory amendment in 2019 (ICC Assembly of States Parties, 2018, Annex IV; ICC Assembly of States Parties, 2019a, para. 3). On that basis, a number of states have codified both IAC and NIAC starvation in their war crimes statutes, many of which entail a form of universal jurisdiction (ICC Legal Tools, *National Implementing Legislation Database*, last visited 2023; ICRC, *Practice Relating to Rule 53: Starvation as a Method of Warfare*, last visited 2023). Supporting that trend, Security Council Resolution 2417 "underlin[es] that using starvation of civilians as a method of warfare may constitute a war crime" without specifying conflict classification and "strongly urges" states to conduct "investigations within their jurisdiction into violations of international humanitarian law related to the use of starvation of civilians as a method of warfare, including the unlawful denial of humanitarian assistance to the civilian population in armed conflict, and, where appropriate, to take action against those responsible in accordance with domestic and international law, with a view to .... ensuring accountability" (UN Security Council Res. 2417, 2018, preambular para. 14, operative para. 10).

As the ICC crime is thought to reflect customary international law and (not coincidentally) provides the model for most domestic codifications, the ICC Elements of Crimes document offers the key interpretive starting point (*Elements of Crimes* [ICC], 2013). In addition to specifying elements relating to the act's association with armed conflict, it provides that the crime attaches when a perpetrator both "deprived civilians of objects indispensable to their survival" and "intended to starve civilians as a method of warfare" (*Elements of Crimes* [ICC], 2013, p. 31). Crucially, the prosecutor does not need to establish that the impugned conduct caused any particular form of harm, suffering, or death; engaging in the deprivation of indispensable objects with the requisite intent is sufficient (Akande & Gillard, 2019, pp. 760–761; *Elements of Crimes* [ICC], 2013).

As noted above, the crime applies equally to all modes of deprivation, drawing no distinction between attacking indispensable objects and blocking humanitarian delivery. However, unlike the underlying prohibition in the law of armed conflict, the crime includes a *mens rea* component, with liability attaching only when the perpetrator "intended to starve civilians as a method of warfare" (*Elements of Crimes* [ICC], 2013, p. 31). Although specific to the crime, this raises interpretive questions that parallel those applicable to the underlying IHL rule.

On the most restrictive interpretation, the use of "intent" together with "method of warfare" might be understood to imply that this element would be satisfied only when the perpetrator acts with the purpose of weaponizing the civilian harm or death associated with starvation (DeFalco, 2017, p. 1145; Marcus, 2003, p. 269; Werle & Jeßberger, 2020, p. 559). For the war crime, this approach would apply the narrow "weaponized civilian suffering" understanding discussed above not only to encirclement deprivation but also to the attack, destruction, removal, or rendering useless of indispensable objects. Although more coherent than an interpretation that would differentiate the legal standard across different modes of deprivation, this purposive approach is neither the most compelling harmonization, nor demanded by the reference to "intent."

First, if "starvation of civilians as a method of warfare" is understood to refer to the transitive act of deprivation, then even an understanding of "intent" that is limited to direct (or purposive) intent would require establishing only that the deprivation was purposive, not that it was done to weaponize civilian suffering (Dannenbaum, 2022a, sec. V(D)). Moreover, as discussed above, even

if it were thought necessary to show that the deprivation was targeted at civilians, precisely that could be shown whenever the impugned acts were either targeted at a population that is civilian in aggregate or targeted indiscriminately at civilians and combatants. Indeed, the ICC has adopted the latter approach in interpreting the war crime of "intentionally directing attacks against the civilian population or against individual civilians" (*Prosecutor v. Ntaganda*, 2019, paras. 921–923). Other tribunals have reached similar conclusions (*Prosecutor v. Kaing Guek Eav*, 2010, para. 310; *Prosecutor v. Martić*, 2008, para. 260).

Second, even if "intentionally using starvation of civilians as a method of warfare" were thought to imply the intentional infliction of a particular form of suffering on civilians (i.e., to implicate starvation as an outcome, rather than as a transitive act), it does not follow that that outcome must be the purpose of the impugned act. As it relates to consequences, "intent" is defined in article 30 of the ICC Statute to include not only purposive intent, but also awareness that the proscribed consequence will occur in the ordinary course of events (ICC, 2019, art. 30(2)(b)). This oblique form of intent has been interpreted to entail acting with a virtual certainty that the consequence will occur, whether or not it is sought (*Prosecutor v. Lubanga*, 2014, paras. 447–450). If the referent of "intent" in the starvation war crime is indeed understood to be starvation as a consequence, there is good reason to interpret the term to include this oblique form (D'Alessandra & Gillett, 2019, p. 30; Dannenbaum, 2022a, sec. IV(B); Jordash et al., 2019, pp. 854, 858–860). Although the article 30 definition applies formally only to the default *mens rea* standards (not those specific to individual crimes) (*Elements of Crimes* [ICC], 2013, p. 1; Statute of the ICC, art. 30(1)), terms within a legal framework ought to be (rebuttably) presumed to have a consistent meaning. The ICC has appropriately read crime-specific uses of "intentionally" in light of the general meaning provided in article 30 (*Prosecutor v. Bemba*, 2018, para. 677). Even absent this presumption of statutory consistency, the pervasiveness of the oblique form of intent in criminal law is such that it would be a plausible interpretation of "intent" on its own terms (Finnin, 2012). The upshot of including both oblique and direct understandings would be the criminality of any deprivation operation in which civilians are targeted with starvation *or* are virtually certain to starve as a result of the operation.

Ultimately, there is good reason to believe that criminal liability will attach whenever the deprivation of objects indispensable to civilian survival is purposive and either applied indiscriminately or to a population that is civilian in its aggregate character. However, even if a narrower interpretive approach were adopted requiring intent vis-à-vis civilian starvation as an outcome, this could be satisfied through showing that outcome to have been *either* the purpose *or* the inevitable consequence of the deprivation actions.

It is highly likely that practices in several contemporary conflicts satisfy one or both of these thresholds. Investigators and prosecutors operating in systems with the appropriate jurisdiction (whether the ICC in the context of Ukraine, the promised hybrid court in the context of South Sudan, or domestic courts exercising universal jurisdiction over crimes in Syria) would do well to foreground this war crime in their work.

Starvation and International Crime. Tom Dannenbaum.
Revista DIECISIETE. 2023. Nº 9. Madrid. ISSN 2695-4427 Versión digital (pp. 135-156) DOI: 10.36852/2695-4427_2023_09.07

CRIMES AGAINST HUMANITY AND GENOCIDE

This, however, cannot be the endpoint of the analysis. Whichever interpretation of the starvation war crime prevails, operations that are not shaped by or dependent upon armed conflict cannot qualify as war crimes of any kind (*Elements of Crimes* [ICC], 2013, p. 13; *Prosecutor v. Kunarac*, 2002, paras. 57–60). Government-inflicted starvation in North Korea exemplifies the phenomenon of mass deprivation inflicted outside of armed conflict (Mackenzie, 2023; Salmón, 2022, paras. 5, 19; Commission of Inquiry on Human Rights in the DPRK, 2014, paras. 493–692). In a different vein, but with a similar upshot, the Independent Fact-Finding Mission on Myanmar determined in 2019 that most government "deprivation of food and denials of humanitarian relief" were "not directly connected" with the contemporaneous armed conflict in Myanmar, thus precluding the applicability of war crimes (Independent International Fact-Finding Mission on Myanmar, 2019, para. 174). Given that ICC amendments apply only on a state-by-state basis as individual ratifications occur, even many deprivation operations that *do* have a belligerent nexus to a non-international armed conflict are currently beyond ICC jurisdiction over the starvation war crime (although other ICC war crimes are potentially available and other courts may be able to hear starvation war crime cases) (Statute of the ICC, art. 121(5)).

When war crimes are inapplicable, crimes against humanity and genocide offer the remaining routes to international criminal accountability. The former category encapsulates various kinds of criminal conduct undertaken as part of a widespread (large in scale) or systematic (organized, patterned, and non-random) attack on a civilian population (*Prosecutor v. Katanga*, 2014, para. 1098; *Prosecutor v. Kunarac*, 2002, para. 94; *Prosecutor v. Ntaganda*, 2019, paras. 691–692). The concept of "attack" here is not limited to the use of armed force, but "encompasses any mistreatment of the civilian population" (*Prosecutor v. Kunarac*, 2002, para. 86). At the ICC, the attack must occur pursuant to a state or organizational policy (Statute of the ICC, art. 7(2)(a)). Genocide, on the other hand, entails certain listed acts undertaken with the specific intent to destroy a national, racial, religious, or ethnic group in whole or in part, as such (Statute of the ICC, art. 6). Under the right conditions, each could apply to the infliction of mass deprivation.

CRIMES AGAINST HUMANITY

The crime against humanity of greatest apparent relevance to mass deprivation is extermination—the crime of mass murder. Although reminiscent of genocide in the popular imagination (Luban, 2006), extermination need not entail discriminatory intent, whereas genocide need not include killing. The relevance of extermination to starvation methods is apparent from the definition common to the ICC Statute and the International Law Commission's (ILC's) 2019 Draft Articles on Prevention and Punishment of Crimes Against Humanity. The latter, which is currently under consideration at the Sixth Committee of the UN General Assembly, is the first effort at a global crimes against humanity treaty (International Law Commission, 2019, p. 11). Their common definition of extermination includes "the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population" (*Elements of Crimes* [ICC], 2013, p. 6 n.9; Statute of the ICC, art. 7(2)(b); International Law Commission, 2019, art. 2(2)(b)). Here, starvation is not only incorporated explicitly in the most significant contemporary definitions of extermination; it is foregrounded as the only codified exemplification of the crime. In that sense, extermination has a unique expressive aptness as a criminal category through which to pursue accountability for mass deprivation. Parenthetically, whenever extermination is applicable, the crime against humanity of murder would also be applicable on the same grounds, sharing the basic structure of extermination, but without the massiveness element and without the codified reference to the

deprivation of essentials (*Elements of Crimes* [ICC], 2013, p. 5; Statute of the ICC, art. 7(1)(b); International Law Commission, 2019, art. 2(1)(a)).

However, the difficulty with extermination and murder is that these crimes attach only when perpetrators intentionally cause death (*Elements of Crimes* [ICC], 2013, pp. 5–6). In the case of extermination, the acts of deprivation must be "calculated" to cause human destruction. Relative to kinetic attacks or executions, the graduality of deprivation and the multiple intervening factors contributing to fatalities complicate establishing causation and inferring intent. Even in famine, the proximate cause of death is typically not starvation itself, but one or more of the communicable diseases that proliferate in such situations (Conley & de Waal, 2019, p. 701; de Waal, 2018, pp. 6, 23). Deprivation enables such proliferation, but outbreaks inevitably involve multiple factors.

The associated prosecutorial predicament is not hypothetical. In 2016, the Supreme Court Chamber of the ECCC reversed a finding of extermination associated with the starvation of persons during the transfer of hundreds of thousands under the Khmer Rouge on the grounds that the link between mass deprivation and large-scale death was not established (*Co-Prosecutors v. Nuon Chea & Khieu Samphan*, 2018, paras. 536–560). In the 1990s, the UN Commission of Experts found that the supply of essentials during the siege of Sarajevo was "extremely limited (United Nations Commission of Experts, 1994, para. 75)," but concluded, "As no one appears to have died of starvation, cold, or dehydration in Sarajevo, it is unlikely anyone could be held liable" for crimes associated with siege deprivation (United Nations Commission of Experts, 1994, para. 77). That analysis predated the codification of a starvation war crime without a consequence element.

The unusual evidentiary difficulty regarding lethal causation and intent is not to say that mass deprivation can never be prosecuted successfully as extermination or murder. Plainly, it can (Ventura, 2019, pp. 794–798; *Co-Prosecutors v. Khieu Samphan*, 2022, paras. 583, 716-718, 727-730, 1969-1976). Moreover, the fact of parallel or intersecting causes of death other than starvation can contribute to, rather than complicate, criminal liability if the accused is also at least partly responsible for those (for example, by preventing or denying adequate medical care to those in need) (*Co-Prosecutors v. Khieu Samphan*, 2022, paras. 583, 711, 716-718, 727-730). However, in general, the complexity of the period between wrongful act and criminal consequence poses a meaningful challenge. Moreover, even in cases of relative evidentiary clarity, an exclusive focus on killing would obscure the wrongfulness of the deprivation inflicted on the many who *survive* starvation conditions despite torturous suffering.

Ultimately, the relative slowness of the effects of deprivation, the difficulty of establishing lethal causation in multivariate contexts, and the fact that many survive conditions of extreme deprivation despite immense suffering evince the limits of extermination and murder as legal categories. In so doing, they also underline the comparative advantage of the starvation war crime in focusing on endangerment through deprivation, rather than killing.

Beyond extermination and murder, the crime against humanity of torture might seem an apt alternative (Ventura, 2019, pp. 793–794), most obviously because its central element is the "intentional infliction of severe pain or suffering, whether physical or mental" (*Elements of Crimes* [ICC], 2013, p. 7; Statute of the ICC, art. 7(2)(e); International Law Commission, 2019, art. 2(2)(e)). When applicable, it would both express a central aspect of the wrongfulness of mass deprivation (namely, the way that it turns the biological imperatives of individuals and groups against themselves) and include a more comprehensive spectrum of those victimized than would be included by the crimes focused on killing (Dannenbaum, 2022b). However, under the ICC Statute and ILC Draft Articles definition, torture applies as a crime against humanity only when the victims are under the "custody or control" of the perpetrator (*Elements of Crimes* [ICC], 2013, p. 7; Statute of the ICC, art. 7(2)(e);

Starvation and International Crime. Tom Dannenbaum.
Revista DIECISIETE. 2023. Nº 9. Madrid. ISSN 2695-4427 Versión digital (pp. 135-156) DOI: 10.36852/2695-4427_2023_09.07

International Law Commission, 2019, art. 2(2)(e)). Even interpreting "control" broadly, its distinctive inclusion as a specific element of torture (and not other crimes against humanity) precludes taking the perpetrator's ability to inflict the prohibited harm as itself satisfying this element.[2] As such, although starving detainees, prisoners, or others under alternative forms of restraint can rise to the level of torture (Stahn, 2022b, p. 288), the category would not capture the many scenarios in which the victims are not so situated.

Persecution offers an alternative and potentially viable route to accountability. It has been defined in past tribunals to include violations of fundamental rights (*Elements of Crimes* [ICC], 2013, p. 10; *Prosecutor v. Krnojelac*, 2003, para. 185; *Prosecutor v. Nahimana*, 2007, para. 985; *Prosecutor v. Ntaganda*, 2019, paras. 987–993) of a similar gravity to the enumerated crimes against humanity (*Prosecutor v. Blaškić*, 2004, paras. 135, 138–139, 160; *Prosecutor v. Nahimana*, 2007, paras. 985, 987; cf. *Prosecutor v. Ntaganda*, 2019, pp. 992, 994), when perpetrated with discriminatory intent on a prohibited dimension (specified in the ICC Statute and ILC Draft Articles as "political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law") (International Law Commission, 2019, art. 2(2)(e); Statute of the ICC, art. 7(2)(e)). That this is a standard that could be satisfied by discriminatory mass deprivation has been affirmed in case law from Nuremberg onwards (*Prosecutor v. Karadžić*, 2016, paras. 2507–2511, 2518; *Prosecutor v. Popović*, 2010, paras. 993–994; *Prosecutor v. Simić*, 2006, paras. 121, 132–134; *Prosecutor v. Blagojević*, 2005, paras. 606, 620; *Prosecutor v. Blaškić*, 2004, para. 155; *Prosecutor v. Göring*, 1946, p. 543).

However, narrowing the crime's scope, the ICC and ILC definitions require that the underlying rights violation is perpetrated "in connection with" another ICC crime or enumerated crime against humanity, respectively (International Law Commission, 2019, art. 2(1)(h); Statute of the ICC, art. 7(1)(h), 7(2)(g)). Interpreting this, an ICC Pre-Trial Chamber has determined that the persecutory act can be perpetrated "in connection with" an international crime without itself constituting that international crime, identifying detention without water and food as persecution on that basis (*Prosecutor v. Al Hassan*, 2019, paras. 668–689, 672, 675, 685). Nonetheless, the requirements to both (i) prove such a connection and (ii) establish discriminatory intent limit the utility of persecution in establishing deprivation methods as criminal in and of themselves.

Given these challenges with the enumerated crimes against humanity, the more promising path to capturing the wrong of mass deprivation under this heading would be via the residual category of "other inhumane acts" (DeFalco, 2017, p. 1176; Ventura, 2019, pp. 791–792). To qualify for inclusion in this category, an act must be of a "similar character," which is to say of similar "nature and gravity," to other crimes against humanity and involve "intentionally causing great suffering, or serious injury to body or to mental or physical health" (*Elements of Crimes* [ICC], 2013, p. 12 n.30; Statute of the ICC, art. 7(1)(k)). A prominent recent example recognized by the SCSL, the ECCC, and the ICC is forced marriage (*Prosecutor v. Ongwen*, 2022, paras. 1009–1040; *Co-Prosecutors v. Nuon Chea & Khieu Samphan*, 2018, paras. 3686–3695; *Prosecutor v. Brima*, 2008, paras. 190–203; Sadat, 2013, p. 350).

On similarity of character, several points are worth emphasizing. First, the enumerated acts within the ICC and ILC definitions of crimes against humanity "protect diverse interests and values (*Rechtsgüter*), including the right to life, health, liberty, and human dignity," most, if not all, of which are threatened by severe deprivation (Stahn, 2022a, p. 247). Second, the *method* of mass deprivation is identified already within the enumerated acts as a way of committing extermination (albeit there with a requirement of lethal causation). Third, the

[2] For a contrary view, see Ventura, 2019, p. 794.

wrong of depriving a population of essentials shares normative underpinnings with torture in the sense that both "tear[] gradually at the capacity of those affected to prioritize their most fundamental commitments, regardless of whether they would choose to do so under the conditions necessary to evaluate matters with a 'contemplative attitude'" (Dannenbaum, 2022b, p. 375). Similarly, rape—another enumerated act—has been considered in genocide jurisprudence to be normatively analogous to "the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period" (Independent International Fact-Finding Mission on Myanmar, 2018, para. 1406; *Prosecutor v. Kayishema*, 1999, para. 116). Fourth, as noted above, providing inadequate food, water, hygiene, or medical care to detainees has been held repeatedly to entail inflicting inhumane treatment as an underlying act of persecution. Fifth, the starvation war crime itself indicates the internationally criminal character of inflicting deprivation. Overall, the conduct and the wrong associated with the deprivation of essentials are surely of the character necessary to qualify as "other inhumane acts."

Turning to consequences, the wrongful act must involve the intentional infliction of great suffering or serious injury. Here, the challenges relating to causation and the inference of intent in complex, multivariate contexts might be thought to recur. However, this aspect of "other inhumane acts" has three significant advantages over the requirement to prove intentional killing in an extermination case.

First, suffering or injury (bodily or mental) is more proximately related to the infliction of deprivation, less clouded by intervening factors, and thus more straightforwardly attributable to those who create those conditions than is death. Second, a focus on great suffering and serious injury recognizes as crime victims not only those who die, but all who endure the grave harms associated with mass deprivation, including those who suffer the atrocity of "semi-starvation" (Conley & de Waal, 2022, p. 38; de Waal, 2018, p. 21). Third, an evidentiary presumption may be apt here. It is presumed that rape necessarily causes severe pain or suffering, such that proving rape is sufficient to establish that consequence element of torture without further evidence of the victim's suffering in the case at hand (*Prosecutor v. Kunarac*, 2002, paras. 150–151). Analogously, it may be appropriate to presume that proof of a certain level of deprivation itself constitutes evidence of great suffering or serious injury (physical or mental) within the affected population, without needing to show specific indicia of that suffering or the causal chain between the deprivation and the harm (Ventura, 2019, p. 792).

The notion of deprivation as an inhumane act finds longstanding support in the relevant jurisprudence. During the development of the Nuremberg Principles, United Nations Secretary-General Trygve Lie issued a memorandum asking rhetorically "whether deprivation of means of sustenance might not be considered as an 'inhumane act'" (Memorandum submitted by the Secretary-General, 1949, p. 67). Israel's 1950 Nazi and Nazi Collaborators (Punishment) Law explicitly included "starvation" as a crime against humanity (Law No. 64 (Israel), 1950, art. 1), thus underpinning part of Adolf Eichmann's conviction eleven years later, which included findings relating to the severe caloric deprivation of those in the Warsaw and Vilna Ghettos (*Attorney General v. Eichmann*, 1961, paras. 16, 130, 200–201, 244(5, 7); *Attorney General v. Eichmann*, 1962, paras. 2, 10). In 2014, the U.N. Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea held that that "knowingly causing prolonged starvation" is a crime against humanity under the "other inhumane acts" category, exemplified by 1990s "decisions and policies violating the right to food, which were applied for the purposes of sustaining the present political system, in full awareness that such decisions would exacerbate starvation and related deaths of much of the population" (Commission of Inquiry on Human Rights in the DPRK, 2014, paras. 76, 78). More recently, the International Commission of Human Rights Experts on Ethiopia determined that the "denial and obstruction of humanitarian assistance to Tigray" satisfied the threshold for this category of crimes against humanity (International Commission of Human Rights Experts on Ethiopia, 2022, para.

98). Meanwhile, the Independent International Fact-Finding Mission on Myanmar has concluded that the government's "movement restrictions, deprivation of food, restrictions on land use and denials of humanitarian relief" all "deny Rohingya access to food and put their health and lives at risk …. result[ing] in serious or great inhumane suffering," therefore qualifying as crimes against humanity (Independent International Fact-Finding Mission on Myanmar, 2019, paras. 172, 175). Although less focused on implications relating to starvation, the Iraqi High Tribunal recognized the 1982 razing of the orchards around Dujail as other inhuman acts under its crimes against humanity provision (*Public Prosecutor v. Hussein*, 2005, pp. 45–46).

Those seeking to build on these foundations and use the other inhumane acts framework to develop a defined deprivation crime against humanity would do well to identify an appropriate set of deprivation-specific criteria. The starvation war crime provides an initial model, suggesting that the initial focus ought to be on the deliberate deprivation of objects indispensable to civilian survival. However, because the inhumane acts category (unlike the starvation war crime) attaches only when the impugned conduct causes "great suffering, or serious injury to body or to mental or physical health," it would also be necessary to specify a threshold of scarcity or food insecurity at which great suffering or serious injury is appropriately presumed. The infliction of famine conditions would clearly be sufficient, but to set that as the minimum threshold would undermine the category's utility in encompassing the atrocity of semi-starvation and avoiding a narrow focus on death (Conley & de Waal, 2022, p. 38; de Waal, 2018, p. 21).

Here, studies on the effects of malnutrition at various stages and levels of food insecurity could inform legal authorities as to the point at which a presumption of great suffering or serious injury is appropriate. The Integrated Food Security Phase Classification is far from flawless in this respect (Conley & de Waal, 2022, pp. 36–37). Nonetheless, the levels of acute malnutrition and crisis coping mechanisms, as well as hunger-related mortality at phases 3 and 4 spotlight the extent to which it would be an error to focus solely on Phase 5 catastrophes in this respect.

Ultimately, the development of a deprivation-as-inhumane-act crime would arise from an iterated effort, with details elaborated on a case-by-case basis. Whenever individuals engage in deliberate acts of deprivation (such as destroying, removing, rendering useless, or obstructing the delivery of objects indispensable to civilian survival) either with the goal of inflicting great suffering or serious injury to body or to mental or physical health or in the knowledge that this would occur with a virtual certainty, and where this can be shown to have been knowingly part of a widespread or systematic attack, the crime would be established.

GENOCIDE

The final international criminal category available for starvation prosecutions is genocide. Although both "killing" and "causing serious bodily or mental harm" are underlying genocidal acts that could attach to starvation, each requires establishing causation along similar lines to those discussed above with respect to murder, extermination, and other inhumane acts, while also requiring that prosecutors prove special genocidal intent (*Elements of Crimes* [ICC], 2013, p. 2; Marcus, 2003, p. 262; Ventura, 2019, p. 810). The underlying genocidal act that better captures the nature of deprivation, while also offering a unique path to accountability, is "[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (Statute of the ICC, art. 6(c))."

Expressively, the aptness of this category is obvious. The ICC's Elements of Crimes document specifies "The term "conditions of life" may include deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes (*Elements of Crimes* [ICC], 2013, p. 3 n.4)."

Similarly, the case law of earlier tribunals identifies subjecting a group to a subsistence diet and reducing other essentials below minimum requirements as paradigmatic examples of this genocidal act (*Prosecutor v. Karadžić*, 2016, para. 547; *Prosecutor v. Tolimir*, 2015, paras. 225–228). It is the clearest link to Raphael Lemkin's initial focus on starvation as a central component of genocide (de Waal, 2018, pp. 14–16).

Genocide has yet to be prosecuted at the ICC. However, its inclusion in Omar Al Bashir's updated arrest warrant was predicated in part on reasonable grounds to believe that his forces had "contaminated the wells and water pumps of the towns and villages primarily inhabited by members of the [targeted] Fur, Masalit and Zaghawa groups," (a clear example of rendering them useless and a solid basis for the warrant's reliance on the conditions of life genocidal act alongside killing and the infliction of serious bodily or mental harm) (*Prosecutor v. Al Bashir* Second Warrant of Arrest, 2010, pp. 7–8).

The "conditions of life" category of genocide resembles the language used to define extermination. However, whereas the latter requires establishing a causal connection between the impugned conduct and mass death, the former includes no consequence element beyond the infliction of the conditions themselves (*Elements of Crimes* [ICC], 2013, p. 3; *Prosecutor v. Karadžić*, 2016, paras. 2583, 2586; *Prosecutor v. Tolimir*, 2015, paras. 225–228), thus avoiding the most significant evidentiary stumbling block associated with prosecuting deprivation as extermination.

In exchange, however, genocide introduces distinct legal obstacles. The perpetrator must "seek the death of the members of the group" through deprivation—a purpose that may be difficult to establish even in relation to the infliction of "dreadful" conditions with "serious effects" such as "severe weight loss, malnutrition, and, at times starvation" (*Prosecutor v. Karadžić*, 2016, paras. 2584, 2587; *Prosecutor v. Karadžić*, 2019, paras. 706–710). Moreover, genocide applies only when the deprivation is intended "to destroy, in whole or in part, [the] national, ethnical, racial or religious group, as such" (*Elements of Crimes*, 2013, p. 3). In several respects, this defining feature limits significantly the viability of genocide prosecutions (DeFalco, 2017, pp. 1133–1134; Marcus, 2003, p. 263).

First, at the international level, genocide protects only national, racial, religious, and ethnic groups. The ICTR initially indicated that the rule could cover "any group, similar to the four groups in terms of its stability and permanence" (*Prosecutor v. Akayesu*, 1998, para. 701). However, the Tribunal did not rely upon this expansive interpretation and, although the boundaries of the enumerated groups have been interpreted broadly, the notion that coverage may extend to groups other than the four (such as those defined by gender, sexuality, politics, or otherwise) has not taken hold in the case law (*Co-Prosecutors v. Nuon Chea & Khieu Samphan*, 2018, paras. 792–795; *Prosecutor v. Akayesu*, 1998, paras. 170–172, 701–702; Schabas, 2022, pp. 125–126). Second, even assuming a protected group, it is always difficult to infer purposive genocidal intent from wrongful conduct that can be explained in multiple ways. Third, in the context of genocide, the purposive intent must attach to the group's destruction "in whole or in part, as such." Interpreting this, the ICTY has required proof of the perpetrator's intent to destroy a "substantial part" of the group, defined qualitatively or quantitatively, with an emphasis on the impact "the destruction of the targeted part will have on the overall survival of that group" (*Prosecutor v. Krstić*, 2004, paras. 8–12; *Prosecutor v. Mladić*, 2021, para. 580). This was a key obstacle to establishing genocide in areas of Bosnia and Herzegovina other than Srebrenica during the 1990s (*Prosecutor v. Mladić*, 2021, paras. 576–582).

In the rare scenarios in which genocidal intent can be established, the advantages of the "conditions of life" category on the issue of causation are such that it may offer a clearer path to accountability than extermination. However, the crime against humanity category of other inhumane acts avoids the most complicated causation problem associated with extermination, while also avoiding genocide's demanding intent threshold.

Starvation and International Crime. Tom Dannenbaum.
Revista DIECISIETE. 2023. Nº 9. Madrid. ISSN 2695-4427 Versión digital (pp. 135-156) DOI: 10.36852/2695-4427_2023_09.07

CONCLUSION

Among the key drivers of the backsliding on SDG 2 are the choices of belligerents about how to fight and governments about how to exercise control. The system of international criminal justice has been slow to catch up to this reality, not least because of the graduality and complexity of deprivation atrocities relative to more established international crimes.

The legal tools exist for a more proactive response. Pursuing that objective would mean foregrounding the elements of the starvation war crime in investigation, evidence-gathering, and case-building, developing the details of a starvation crime against humanity (as an inhumane act), and making investigative and prosecutorial decisions that account for the expressive and precedential value of starvation cases, notwithstanding the risks associated with their relative legal novelty.

Starvation methods are criminal due to the torturous suffering they inflict. However, the most important upshot of a close legal analysis is that the technical elements of the war crime hinge not on the infliction of that suffering, but on the deprivation of indispensable objects. Focusing the criminal analysis on the wrongful conduct, rather than its outcome obviates the evidentiary challenges associated with establishing causation. For a similar reason, in the absence of an armed conflict (or a nexus thereto), the crime against humanity of other inhumane acts and possibly the conditions of life form of genocide are more promising as legal categories than are other possibilities, such as extermination.

BIBLIOGRAPHY

- Akande, D., & Gillard, E.-C. (2019). Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare. *Journal of International Criminal Justice*, *17*(4), 753–779. https://doi.org/10.1093/jicj/mqz050.
- Amnesty International. (2012). *Universal Jurisdiction: A Preliminary Study of Legislation Around the World – 2012 Update*. https://www.amnesty.org/en/documents/ior53/019/2012/en/.
- AP I [Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I)] (1977). 1125 United Nations Treaty Series 3.
- Attorney General v. Eichmann, District Court of Jerusalem, (December 11, 1961). Criminal Case No. 40/61.
- Attorney General v. Eichmann, Supreme Court of Israel, (May 29, 1962). Criminal Appeal 336/61.
- Bartels, R. (2015). Denying Humanitarian Access as an International Crime in Times of Non-International Armed Conflict: The Challenges to Prosecute and Some Proposals for the Future. *Israel Law Review*, *48*(3), 281–307. https://doi.org/10.1017/S0021223715000175.
- Boylan, K., & Olivier, L. (2018). *Valley of the Shadow: The Siege of Dien Bien Phu*. Osprey Publishing.
- Coco, A., de Hemptinne, J., & Lander, B. (2019). International Law Against Starvation in Armed Conflict: Epilogue to a Multi-faceted Study. *Journal of International Criminal Justice*, *17*(4), 913–923. https://doi.org/10.1093/jicj/mqz053.
- Commission of Inquiry on Human rights in the Democratic People's Republic of Korea [DPRK]. (2014). *Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea*. Human Rights Council. U.N. Doc. A/HRC/25/CRP.1.
- Commission on Human Rights in South Sudan. (2020a). *There Is Nothing Left For Us": Starvation As a Method of Warfare in South Sudan*. Human Rights Council. UN Doc. A/HRC/45/CRP.3.
- Commission on Human Rights in South Sudan. (2020b). *Report of the Commission on Human Rights in South Sudan*. Human Rights Council. U.N. Doc. A/HRC/43/56.
- Conley, B., de Waal, A., Murdoch, C., & Jordash, W. (Eds.). (2022). *Accountability for Mass Starvation: Testing the Limits of the Law*. Oxford University Press.
- Conley, B., & de Waal, A. (2019). The Purposes of Starvation: Historical and Contemporary Uses. *Journal of International Criminal Justice*, *17*(4), 699–722. https://doi.org/10.1093/jicj/mqz054.
- Conley, B., & de Waal, A. (2022). What is Starvation? In B. Conley, A. de Waal, C. Murdoch, & W. Jordash QC (Eds.), *Accountability for Mass Starvation*. Oxford University Press.
- *Co-Prosecutors v. Nuon Chea & Khieu Samphan*, (November 16, 2018). (Case 002/02), 002/19-09-2007/ECCC/TC.
- *Co-Prosecutors v. Khieu Samphan*, (December 23, 2022). (Case 002/02), 002/19-09-2007-ECCC/SC.
- Cottier, M., Richard, E., & Aboueldahab, S. (2022). Article 8(2)(b)(xxv): Starvation of Civilians as a Method of Warfare. In Kai Ambos (Ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (4th ed.) (pp.580-596). Beck | Hart | Nomos.
- D'Alessandra, F., & Gillett, M. (2019). The War Crime of Starvation in Non-International Armed Conflict. *Journal of International Criminal Justice*, *17*(4), 815–847. https://doi.org/10.1093/jicj/mqz042.
- Dannenbaum, T. (2021). Encirclement, Deprivation, and Humanity: Revising the San Remo Manual Provisions on Blockade. *International Law Studies*, *97(1)*, 307-394. https://digital-commons.usnwc.edu/ils/vol97/iss1/20/.

- Dannenbaum, T. (2022a). Criminalizing Starvation in an Age of Mass Deprivation in War: Intent, Method, Form, and Consequence. *Vanderbilt Journal of Transnational Law*, *55*(3), 681–755. https://scholarship.law.vanderbilt.edu/vjtl/vol55/iss3/3/.
- Dannenbaum, T. (2022b). Siege Starvation: A War Crime of Societal Torture. *Chicago Journal of International Law*, *22*(2), 368-442 https://chicagounbound.uchicago.edu/cjilAvailableat:https://chicagounbound.uchicago.edu/cjil/vol22/iss2/1.
- Dannenbaum, T. (2022c). Legal Frameworks for Assessing the Use of Starvation in Ukraine. *Just Security*, 22 April 2022. https://www.justsecurity.org/81209/legal-frameworks-for-assessing-the-use-of-starvation-in-ukraine/.
- de Waal, A. (1997). *Famine Crimes: Politics & the Disaster Relief Industry in Africa*. Indiana University Press.
- de Waal, A. (2018). *Mass Starvation: The History and Future of Famine*. Polity.
- Defalco, R.C. (2017). Conceptualizing Famine as a Subject of International Criminal Justice. *University of Pennsylvania Journal of International Law*, *38*(4), 1113–1187. https://scholarship.law.upenn.edu/jil/vol38/iss4/2.
- DeFalco, R.C. (2021). Time and the Visibility of Slow Atrocity Violence. *International Criminal Law Review*, *21*(5), 905–934. https://doi.org/10.1163/15718123-bja10076.
- Dinstein, Y. (2022). *The Conduct of Hostilities under the Law of International Armed Conflict* (4th ed.). Cambridge University Press. https://doi.org/10.1017/CBO9781316389591.
- Drew, P. J. (2019). Can We Starve the Civilians? *International Law Studies*, *95(1)*, 302-321. https://digital-commons.usnwc.edu/ils/vol95/iss1/10/.
- Dutton, Y., & Sterio, M. (2022). The War in Ukraine and the Legitimacy of the International Criminal Court. *Just Security*, 30 August 2022. https://www.justsecurity.org/82889/the-war-in-ukraine-and-the-legitimacy-of-the-international-criminal-court/.
- *Elements of Crimes* [ICC]. (2013). International Criminal Court. Doc. ICC-PIOS-LT-03-002/15.
- Finnin, S. (2012). Mental Elements Under Article 30 of the Rome Statute of the International Criminal Court. *The International and Comparative Law Quarterly*, *61*(2), 325–359.
- Food and Agriculture Organization & World Food Programme. (2023). *Hunger Hotspots: FAO-WFP early warnings on acute food insecurity | June-November 2023 Outlook*. https://doi.org/10.4060/cc6206en.
- Gaggioli, G. (2019). Are Sieges Prohibited under Contemporary IHL?, *EJIL:Talk!*, 30 January 2019. https://www.ejiltalk.org/joint-blog-series-on-international-law-and-armed-conflict-are-sieges-prohibited-under-contemporary-ihl/.
- Gillard, E.-C. (2019). *Sieges, the Law and Protecting Civilians*. Chatham House Briefing, June 2019. https://www.chathamhouse.org/sites/default/files/publications/research/2019-06-27-Sieges-Protecting-Civilians_0.pdf.
- Group of Eminent International and Regional Experts on Yemen. (2019). *Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen*. Human Rights Council. UN Doc. A/HRC/42/CRP.1.
- Heintschel von Heinegg, W. (2016). Blockades and Interdictions. In M. Weller (Ed.), *The Oxford Handbook of the Use of Force in International Law* (pp. 925–946). Oxford University Press. https://doi.org/10.1093/law/9780199673049.003.0044.
- ICC Assembly of States Parties. (2018). *Report of the Working Group on Amendments*. ICC- ASP/17/35.
- ICC Assembly of States Parties. (2019a). *Report of the Working Group on Amendments*. ICC- ASP/18/32.

- ICC Assembly of States Parties. (2019b). *Resolution on Amendments to Article 8 of the Rome Statute of the International Criminal Court*. Resolution ICC-ASP/18/Res.5.
- Independent International Fact-Finding Mission on Myanmar. (2019). *Detailed findings of the Independent International Fact-Finding Mission on Myanmar*. Human Rights Council. U.N. Doc. A/HRC/42/CRP.5.
- Independent International Fact-Finding Mission on Myanmar. (2018). *Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*. Human Rights Council. U.N. Doc. A/HRC/39/CRP.2.
- International Commission of Human Rights Experts on Ethiopia. (2022). *Report of the International Commission of Human Rights Experts on Ethiopia*. Human Rights Council. U.N. Doc. A/HRC/51/46.
- International Law Commission. (2019). *Draft articles on Prevention and Punishment of Crimes Against Humanity*. U.N. Doc. A/74/10.
- *Al-Bassiouni & others v. Prime Minister & Minister of Defence (Israel)*. (2008). HCJ 9132/07.
- Jalloh, C.C. (2018). Universal Criminal Jurisdiction. Annex A to Report of the International Law Commission (70th Session). U.N. Doc. A/73/10, 307-325.
- Jordash, W., Murdoch, C., & Holmes, J. (2019). Strategies for Prosecuting Mass Starvation. *Journal of International Criminal Justice*, *17*(4), 849–879. https://doi.org/10.1093/jicj/mqz044.
- Kalpouzos, I., & Mann, I. (2015). Banal Crimes Against Humanity: The Case of Asylum Seekers in Greece. *Melbourne Journal of International Law*, *16*(1), 1-28. https://law.unimelb.edu.au/__data/assets/pdf_file/0005/1586813/16101KalpouzosandMann2.pdf.
- Kersten, M. (2016). *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace*. Oxford University Press.
- Law No. 64 (Israel) (1950), Nazi and Nazi Collaborators (Punishment) Law, Pub. L. No. 5710, Israel.
- Luban, D. (2006). Calling Genocide by Its Rightful Name: Lemkin's Word, Darfur, and the UN Report. *Chicago Journal of International Law*, *7*(1). 303-320. https://chicagounbound.uchicago.edu/cjil/vol7/iss1/14/.
- Mackenzie, J. (2023). North Korea: Residents tell BBC of Neighbours Starving to Death. *BBC News*. 14 June 2023.
- Marcus, D. (2003). Famine Crimes in International Law. *American Journal of International Law*, *97*(2), 245–281. https://doi.org/10.2307/3100102.
- Melzer, N. (2009). *Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law*. https://www.icrc.org/en/publication/0990-interpretive-guidance-notion-direct-participation-hostilities-under-international.
- Memorandum submitted by the Secretary-General: *The Charter and Judgment of the Nürnberg Tribunal: History and Analysis*. (1949). UN Sales No. 1949.V.7.
- Mulder, N., & van Dijk, B. (2021). Why Did Starvation Not Become the Paradigmatic War Crime in International Law? In Ingo Venzke & Kevin Jon Heller (Eds.), *Contingency in International Law* (pp. 370-388). Oxford University Press. https://doi.org/10.1093/oso/9780192898036.003.0022.
- *National Implementing Legislation Database*. (last visited 22 June 2023). ICC Legal Tools Database. https://www.legal-tools.org/national-implementing-legislation-database.
- Nijs, M. (2021). Humanizing siege warfare: Applying the principle of proportionality to sieges. *International Review of the Red Cross*, *102*(*914*). 683-704. https://doi.org/10.1017/S1816383121000680.
- Office of the General Counsel (US Department of Defense). (2023). *Department of Defense Law of War Manual*. Originally: June 2015, updated: July 2023. https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/dod-law-of-war-manual-june-2015-updated-july%202023.pdf.

- *Practice Relating to Rule 53: Starvation as a Method of Warfare*. (last visited 22 June 2023). International Committee of the Red Cross. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule53.
- *Prosecutor v. Akayesu* (September 2, 1998). Trial Judgment. ICTR-96-4-T.
- *Prosecutor v. Al Bashir* (July 12, 2010). Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir. ICC-02/05-01/09.
- *Prosecutor v. Al Hassan* (November 13, 2019). Confirmation of Charges. ICC-01/12/01/18-461-Corr-Red.
- *Prosecutor v. Bemba et al.* (March 8, 2018). Appeal Judgment. ICC-01/05-01/13-2275-Red.
- *Prosecutor v. Blagojević et al.* (January 17, 2005). Trial Judgment. IT-02-60-T.
- *Prosecutor v. Blaškić* (July 29, 2004). Appeal Judgment. IT-95-14-A.
- *Prosecutor v. Brima et al.* (February 22, 2008). Appeal Judgment. SCSL-2004-16-A.
- *Prosecutor v. Galić* (November 30, 2006). Appeal Judgment. IT-98-30/1-A.
- *Prosecutor v. Göring et al.* (September 30 - October 1, 1946). Judgment (1946), in 22 *Trial of the Major War Criminals Before the International Military Tribunal* vol. 22 (1947), (pp.411-589).
- *Prosecutor v. Kaing Guek Eav* (alias Duch), (July 26, 2010). Trial Judgment. ECCC 001/18-07-2007/ECCC/TC.
- *Prosecutor v. Karadžić*, (March 24, 2016). Trial Judgment. IT-95-5/18-T.
- *Prosecutor v. Karadžić*, (March 20, 2019). Appeal Judgment. MICT-13-55-A.
- *Prosecutor v. Katanga*, (March 7, 2014). Trial Judgment. ICC-01/04-01/07.
- *Prosecutor v. Kayishema et al.*, (May 21, 1999). Trial Judgment. ICTR-95-1-T.
- *Prosecutor v. Kordić and Čerkez*, (December 17, 2004). Appeal Judgment. IT-95-14/2-A.
- *Prosecutor v. Krnojelac*, (September 17, 2003). Appeal Judgment. IT-97-25-A.
- *Prosecutor v. Krstić*, (April 19, 2004). Appeal Judgment. IT-98-33-A.
- *Prosecutor v. Kunarac et al.*, (June 12, 2002). Appeal Judgment. IT-96-23 & IT-96-23/1-A.
- *Prosecutor v. Kvočka et al.*, (February 28, 2005). Appeal Judgment. IT-98-29-A.
- *Prosecutor v. Lubanga*, (December 1, 2014). Appeal Judgment. ICC-01/04-01/06-3121-Red.
- *Prosecutor v. Martić*, (October 8, 2008). Appeal Judgment. ICTY IT-95-11-A.
- *Prosecutor v. Mladić*, (June 8, 2021). Appeal Judgment. MICT-13-56-A.
- *Prosecutor v. Nahimana et al.*, (November 28, 2007). Appeal Judgment. ICTR-99-52-A.
- *Prosecutor v. Ntaganda*, (March 30, 2021). Appeal Judgment. ICC-01/04-02/06 A A2.
- *Prosecutor v. Ntaganda*, (July 8, 2019). Trial Judgment. ICC-01/04-02/06-2359.
- *Prosecutor v. Ongwen*, (December 15, 2022). Appeal Judgment. ICC-02/04-01/15 A.
- *Prosecutor v. Popović et al.*, (June 10, 2010). Trial Judgment. IT-05-88-T.
- *Prosecutor v. Simić et al.*, (November 28, 2006). Appeal Judgment. IT-95-9-A.
- *Prosecutor v. Strugar*, (July 17, 2008). Appeal Judgment. IT-01-42-A.
- *Prosecutor v. Tolimir*, (April 8, 2015). Appeal Judgment. IT-05-88/2-A.
- Provost, R. (1992). Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait. *Columbia Journal of Transnational Law*, *30*. 577-639.
- *Public Prosecutor v. Hussein*, (November 4, 2005). High Iraqi Court. Case No. 1/C1/2005.

- Report of the Secretary-General. (2023). *Protection of Civilians in Armed Conflict*. U.N. Doc. S/2023/345.
- Rice, X., & Branigan, T. (2009, May 5). Sudanese president expels aid agencies. *The Guardian*.
- Sadat, L. N. (2013). Crimes Against Humanity in the Modern Age. *American Journal of International Law, 107(2).* 334-377. https://doi.org/10.5305/amerjintelaw.107.2.0334.
- Salmón, E. (2022). *Situation of human rights in the Democratic People's Republic of Korea*. U.N. Doc. A/77/522.
- Sandoz, Y., Swinarski, C., & Zimmermann, B. (Eds.). (1987). *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. International Committee of the Red Cross.
- Schabas, W. A. (2022). Article 6. Genocide. In K. Ambos (Ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (5th ed.). (pp. 117-134).
- Stahn, C. (2022a). Article 7(1)(k): Other Inhumane Acts. In K. Ambos (Ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (5th ed.). (pp. 245-253).
- Stahn, C. (2022b). Article 7(2)(e): Torture. In K. Ambos (Ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (5th ed.). (pp. 285-290).
- Statute of the ICC [International Criminal Court]. Originally: July 17, 1998, 2187 U.N.T.S. 90 (last amended Dec. 6, 2019, depository notification C.N.394.2020.TREATIES-XVIII.10.g).
- Trial International. (2023). *Universal Jurisdiction Annual Review 2023*. https://trialinternational.org/wp-content/uploads/2023/04/TRIAL_UJAR_2023_DIGITAL_21_04_Version2.pdf.
- United Kingdom Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict*. (2004). Joint Service Publication 383. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/27874/JSP3832004Edition.pdf.
- United Nations Commission of Experts (1994). Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), Annex VI.B: The Battle of Sarajevo and the Law of Armed Conflict, U.N. Doc S/1994/674/Add.2 (vol. III).
- UN Security Council Res. 1593 (2005). U.N. Doc. S/RES/1593.
- UN Security Council Res. 1970 (2011). U.N. Doc. S/RES/1970.
- UN Security Council Res. 2417 (2018). UN Doc. S/RES/2417.
- Van Schaack, B. (2016). Siege Warfare and the Starvation of Civilians as a Weapon of War and War Crime. *Just Security*. 4 February 2016. https://www.justsecurity.org/29157/siege-warfare-starvation-civilians-war-crime/.
- Vasiliev, S. (2022). Watershed Moment or Same Old? Ukraine and the Future of International Criminal Justice. *Journal of International Criminal Justice*, *20*(4), 893–909. https://doi.org/10.1093/jicj/mqac044.
- Ventura, M. J. (2019). Prosecuting Starvation under International Criminal Law. *Journal of International Criminal Justice*, *17*(4), 781–814. https://doi.org/10.1093/jicj/mqz043.
- Watts, S. (2019). Humanitarian Logic and the Law of Siege. *International Law Studies*, *95*(1). 1-48.
- Watts, S. (2022). Siege Law. *Articles of War*. 4 March 2022. https://lieber.westpoint.edu/siege-law/.
- Waxman, M. C. (1999). Siegecraft and Surrender: The Law and Strategy of Cities and Targets. *Virginia Journal of International Law*, *39*. 353-424.
- Werle, G., & Jeßberger, F. (2020). *Principles of International Criminal Law* (4th ed.). Oxford University Press.
- Zappalà, S. (2019). Conflict Related Hunger, 'Starvation Crimes' and UN Security Council Resolution 2417 (2018). *Journal of International Criminal Justice*, *17*(4), 881–906. https://doi.org/10.1093/jicj/mqz047.