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INTERNATIONAL LAW AND STARVATION IN ARMED CONFLICT: RETHINKING APPLICATION AND STRENGTHENING PROTECTION THROUGH A HUMAN DIGNITY PERSPECTIVE

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Abstract: *This paper examines starvation in armed conflict, analysing its dual legal meaning: as an unlawful method of warfare under international humanitarian law (IHL) and as an unlawful consequence of acts of warfare under IHL and international human rights law (IHRL), specifically, concerning the right to food. The paper wants to demonstrate that the obligations under IHL and IHRL regarding starvation are complementary. By employing a systematic interpretation, the paper seeks to ensure legal coherence and to strengthen human dignity in armed conflicts.*

Key words: *starvation in armed conflicts; international humanitarian law; international human rights law; right to food; human dignity.*

1. Introduction

Food and armed conflict form a persistent relationship. Lack of food or food insecurity can be one of the causes of armed conflict, a method of warfare and a consequence of armed conflict (S/RES/2417 (2018)). Regarding consequences, lack of food may be a side effect, or an intended outcome created by political and military choices. Addressing the link between lack of food and armed conflict requires consideration of the concept of starvation.

At a meta-legal level, there are several issues in defining this term (Conley and de Waal, 2022, pp. 33-45). For our purpose, starvation is not only a factual element, but it is a legal concept that must be defined. The law is like King Midas: just as the king's touch turned everything into gold, so does the law's touch turn everything to acquire a legal recognition. The legal meaning of starvation under international law can be deduced from international humanitarian law (IHL) and international criminal law (ICL). According to IHL, starvation is, first and foremost, an unlawful method of warfare (Article 54(1) of

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the Additional Protocol I to the Four Geneva Conventions of 1949, hereinafter API) and a method of combat (Article 14 of the Additional Protocol II to the Four Geneva Convention of 1949, hereinafter APII). According to ICL, it is a war crime (Art. 8(b)(xxv) of the Statute of International Criminal Court). In both cases, starvation is established when the perpetrator (the State in the first case and the natural person in the latter) has the following conduct: depriving the civilians (defined by Article 50 of the Additional Protocol I) of objects indispensable for survival (OIS). In addition to the material element, the perpetrator must support this conduct with the psychological element, which in the first case, is "[…] the specific purpose of denying […]" OIS to civilians (Article 54(2) of the API) and in the second case "intent and knowledge" (Article 30 of the ICC Statute). Lastly, the motive, as well as the effective consequences, are not relevant.

In light of this preliminary reconstruction, starvation is not a relevant consequence of acts of warfare. However, the opposite will be demonstrated. This conclusion is supported by a two-fold argument: the first is a normative argument. According to Article 54(3) of the API, as will be further explained, the term "starvation" is used as a consequence of acts of warfare that leave the civilian population with inadequate food or water. The second is the *Mertens* Clause. According to this clause, "Meta-legal rules, such as those deriving from the principles of humanity and the dictates of public conscience, can be transformed into legal principles" (Ronzitti, 2021, p. 165). Based on this approach, human dignity has become an obligation-creating principle (Le Moli, 2019, p. 361), through which the principle of humanity functions as the base of a customary norm. According to the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), "[…] the primary purpose of this body of law is to safeguard human dignity" (ICTY, 1998, par. 162). Considering this point of view, human dignity as a principle of international law has two functions (Le Moli, 2019, pp. 364-367): axiologically, it is a norm that is part of the *raison d'être* of the international legal order; and, auxiliary, it serves as a tool for interpreting of the conduct of subjects of international law that, even if not explicitly prohibited, could be in violation of this principle. Specifically, according to human dignity as a reflection of the principle of humanity, the principle according to which "*quod non est prohibitum permittitur*" is not applicable in IHL (Ronzitti, p. 165). For the reasons outlined above, the term starvation carries two different meanings. First, as acts of omission or commission, perpetrated by a subject of international law in the first case, and by natural persons in the second case, during armed conflicts (both international armed conflict (IACs) and non-international armed conflict (NIACs)), with the intent to deprive the civilian population of their OIS, regardless of the motives and the actual result. Then, it refers to a factual situation in which there is an "insufficient supply or withholding of some essential commodity or something necessary to live" as a consequence of acts of warfare, regardless of the intent (Hutter, 2015, p. 6; Triffterer, Commentary to ICC Statute, art. 8). For this paper, the first meaning will be applied to the description of Article 54(1) and (2) of the API and in Article 14 of the APII; the second meaning will be used in the analysis of Article 54(3), as well as in the analysis of starvation in relation to international human rights law (IHRL).

2. IHL and Starvation: A Review of existing Law

The prohibition of deliberate starvation of the civilian population as a method of warfare was enshrined in Article 54(1) of the API and in Article 14 of the APII. Under these two articles, deliberate starvation is unlawful both for IACs and NIACs. According to those rules: "[i]t is prohibited to attack, destroy, remove or render useless objects indispensable for survival (OIS) of the civilian population" (Article 54(2) of the API). The second part of Article 54(2) of the API, as well as Article 14 of the APII, provides some examples of what OIS means, such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works. In addition, to qualify the conduct of attacking, destroying, removing, or rendering useless OIS as starvation, it will be necessary to demonstrate the psychological element (i.e. intent). In fact, the last part of Article 54(2) of the API recalls that the conduct must be driven by 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 for any other motive". Moreover, the abovementioned rules are also considered part of international customary law (Henckaerts, 2005, pp. 186-190). Nevertheless, Article 54 of the API and Article 14 of the APII are not the only rules of IHL relevant to preventing starvation. The principle of distinction is also relevant: it covers the prohibition on directing attacks against civilian objects, including objects that are necessary or relevant for preventing food insecurity, even if they are not OIS. That said, if an attack is directed against a legitimate military objective, objects necessary to prevent food insecurity become subject to the proportionality rules (Article 57(2)(a)(iii) of the API).

The rule of proportionality prohibits attacks against military objectives that are expected to cause incidental harm that would be excessive in relation to the concrete and direct military advantage anticipated. Within this framework, starvation must be seen as an incidental harm and, for this reason, it must be considered in relation to the military advantage anticipated. Moreover, the prohibition on the use of means and methods of warfare also applies to those intended or expected to cause widespread, long-term and severe damage to the natural environment (Article 35 of the API; Henckaerts, 2005, pp. 151-160), as well as to the principle of humanity. Starvation could also be seen as a consequence of the means and methods of warfare related to the prohibition on forcibly displacing civilian populations.

In this brief review, it can be seen that starvation is relevant not only as a method of warfare, but that its factual consequences, even when it is not a deliberate choice of the attacker, also become a legal fact in IHL. The question is the *per se* unlawfulness of this phenomenon outside the proportionality rules and Article 54(1) of the API (as well as Article 14 of the APII).

2.1. Article 54(3): Starvation as an unlawful consequence of certain military operations

Returning to Article 54 of the API, it is possible to see how starvation as a consequence of military operations has a material connection with the law of armed conflict. Article

54(1) of the API appears to support a very narrow interpretation of starvation, limiting its unlawfulness only when the attacker has the purpose of starving civilians (see, e.g. Pilloud, et al., 1987, par. 2089; Bothe, Partsch and W.A. Solf, 2013, p. 381). State practice, as demonstrated by military manuals (e. g. US Department of Defense, 2016, para. 5.20.2) confirms this viewpoint. Still, there are other indications, in paragraph 3, that explicitly recall cases when the psychological element of the violation is less robust than intent.

Article 54(3) provides that "[t]he prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party: a) as sustenance solely for the members of its armed forces; or b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement". This provision suggests that, if the goods are used by the enemy in direct support of their actions, they cannot be attacked if the expected effect is, *inter alia*, the starvation of the civilian population. This means that the application of the principle of proportionality in this case is not requested; rather, the operation is explicitly unlawful *per se* if starvation is an expected consequence.

This brief analysis of Article 54 of the API shows how starvation in IHL is considered unlawful not only as a deliberate method of warfare but, under certain circumstances, also as an expected consequence of acts of war. As a result, if starvation emerges *ex post facto* from attacks on objects indispensable to civilian survival, there is no violation of Article 54(3). As will be discussed in the following paragraphs, even if this specific provision is not violated, obligations arise when starvation occurs as a consequence of acts of warfare, even if legitimate, particularly those originating from the humanitarian relief operations and IHRL.

2.2. Starvation and humanitarian relief operations: legal consequences of a legal relevant situation

Another area of IHL related to starvation concerns humanitarian relief operations. According to Article 69 and 70 of the API, the civilian population that is in a territory under occupation or under the control of a Party to the conflict, shall be provided with clothes, bedding, shelter and "other supplies essential to the survival of the civilian population" (Article 69 of the API). Moreover, the provision of Article 69 directly recalls Article 55 of the IV Geneva Convention, which provides "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate". Furthermore, the Parties to the conflict "shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided […], even if such assistance is destined for the civilian population of the adverse party" (Article 70(2) of the API). The relief operation must be "impartial and conducted without any adverse distinction" (Article 70 of the API). In Article 18 of the APII there is a similar rule for NIACs. Those obligations, according to the ICRC, are customary law under IACs

and NIACs (Henckaerts, 2005, pp. 193-200).

In other words, it is possible to see a triple step obligation: first, States have the obligation to meet the needs of civilians who are under their control or occupation; second, if the States who have this obligation fail to comply, an obligation arises upon those States to consent to, without arbitrarily denying, humanitarian relief operation offered by other States or humanitarian organizations; lastly, all the States shall allow and facilitate the operations. Regarding the consent, the denial of the operation is considered arbitrary in three cases: (i) when refusal creates a violation by the State of the obligation to respect the civilian population; (ii) if the withholding violates the principle of necessity and proportionality; (iii) when the refusal is unreasonable, unjust, lacking in predictability or that is otherwise inappropriate (Akande and Gilliard, 2016, pp. 483-511). It is possible to see that if there is a situation of starvation as a consequence of the military operation, withholding the consent to a humanitarian relief could be seen as arbitrary for all the reasons above, particularly in the first case. In fact, if a State is able to ensure the obligation to respect the civilian population under its control or under its occupation, this includes the ability to provide all the OIS, and all the goods mentioned in Article 70 of the API and Article 55 of the IV GC. When a State is unable or unwilling to provide to the civilian population the aforementioned objects, there is a violation of an obligation that has as beneficiary the civilian population. More specifically, Article 55 of the IV GC and Article 70 of the API are complementary in order to grant protection for the civilian population that is as broad as possible. Reading in conjunction those two provisions, it appears that when the State is unwilling to provide food and medical supplies for the population under its effective control, there is a violation of Article 55. However, the incipit of Article 55 states: "To the fullest extent of the means available to it". This means that if the State that controls the territory in which the starvation is happening has insufficient means to ensure goods in a way that prevents starvation (in other words, is unable), the State is not violating Article 55, but the obligation of Article 69 of the API or Article 70 of the API automatically emerges. According to this complementary interpretation of the two rules, there is always an obligation when the civilian population is starving as a consequence of war, and for this reason there is always an obligation on the controlling or occupying State not to deny impartial humanitarian operations.

Moving to NIACs, the same arguments developed for IACs can be applied. In fact, the provision of Article 14 of the APII is a simplified version of Article 54 of the API. Unlike Article 54, there is no paragraph 3. Nonetheless, it is possible to observe the same complementarity with the provision of humanitarian relief found in Article 18 of the APII. According to the ICRC commentary to the APII: "Protocol II is conceived in such a way that this humanitarian rule can be respected whatever the circumstances. […] As soon as there is a lack of indispensable objects, the international relief actions provided for in Article 18 (Relief societies and relief actions) should be authorized to enable the obligation following from Article 14 to be respected" (Pilloud, et al., 1987, par. 4798). Moreover, it is underlined also for NIACs that, even if starvation is explicitly prohibited only as a method of combat, "it is nowadays no longer an acceptable phenomenon, irrespective of how it arises" (Pilloud, et al., 1987, par. 4799).

3. The Right to Food in Armed Conflict

It is now generally accepted that IHRL is generally applicable during armed conflict (ICJ, 1996, par. 25; ICJ, 2004, par. 112; OHCHR, 2004, 31, par. 11). For the purpose of this paper, the right to be analysed is the right to food (Oriolo, 2014), which is provided, *inter alia*, by Article 11 of the ICESCR. The questions to address are three: (i) what is the content of the right; (ii) is the right to food part of customary law; and (iii) are the obligations regarding the right to food under IHRL and the provision of starvation under IHL complementary and, if they are not, which one would prevail. The right to food enshrined in Article 11 of the ICESCR is composed of two parts: the right to adequate food (par. 1) and the right to be free from hunger (par.2). The right to adequate food, according to the UN Committee on Economic, Social and Cultural Rights (CESCR) will be realized when everyone always has physical and economic access to adequate food or means for its procurement (OHCHR, 1999, par. 6). On the other hand, the right to be free from hunger means that the minimum nutritional intake needs to be provided, because it is necessary for survival and so it is closely linked with the right to life. As to any other human right, the rule creates three types of obligations, specifically: the obligation to respect; the obligation to protect and the obligation to fulfil (OHCHR, 1999, par.15). The obligation to respect means that States parties shall not take any measures that prohibit the people under their jurisdiction access to food, not only by destroying food or infrastructure for production, but States shall also not hinder the economic activities by which people realize the right to food on their own. The obligation to protect means that if violations are committed by third or private parties, the State has the duty to investigate, punish and prevent such violations. In other words, States have a due-diligence obligation. The obligation to fulfil the right to food is not the counterpart of the right to be fed. The primary consequence of the obligation to fulfil is that the State must facilitate people's access to food. However, when people cannot provide by themselves the necessary food for reasons beyond their control, such as armed conflicts, States are obliged to guarantee direct access to food to the people under their jurisdiction (OHCHR, 1999, par. 15). Those obligations are on States and should be achieved "progressively" and "to the maximum of [their] available resources".

The question about these obligations and armed conflict is that the State could lose control over part of its territory. In those cases, the government has no authority or control over an area, and the measures taken could be ineffective. Yet, the mere lack of control over a territory does not liberate a State of its obligations. At the same time, rights enshrined in the IHRL should be applied by States that have extraterritorial jurisdiction over the people and the territory involved (International Court of Justice, 2004, par. 112. Ryngaert, 2015. On the concept of 'jurisdiction' in human rights treaty law: Malkovic, 2011, pp. 19-53; Principle 8 and 9 of the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights; De Schutter, et al., 2012, pp. 1101-1109). Furthermore, the deprivation of necessities, including food, may also constitute a breach of "the international legal prohibition of torture and other cruel, inhuman and degrading treatment" (ICJ, 2025, par. 155), and it could also amount to extermination (HRC, 2025, par. 3). Moreover, in exceptional cases

rights can be derogated. The ICESCR does not contain a derogation clause. However, Article 4 of the ICRSCR recognizes the possibility for States to limit rights of the Covenant 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". Unlike derogation, which leads to the disapplication of the norm under the abovementioned circumstances, the limitation cannot affect the *raison d'être* of the provision and the treaty in which the norm is contained (OHCHR, 1999, par. 10). By the letter of Article 11 of the ICESCR, the *raison d'être* of the right to food is the right to be free from hunger. In fact, in Article 11(2), the right to be free from hunger is defined as a "fundamental right to everyone". Furthermore, it should be also considered, the impossibility of performing a treaty according to the principle "*ad impossibilia nemo tenetur*" (Article 61 of the Vienna Convention on the Law of the Treaties of 1969) and that the conduct of States that are not in conformity with an international obligation shall not be considered as a breach if the act is due to *force majeure* (ILC, 2001, Article 23). Both these rules are applicable to Article 11 of the ICESCR. However, since the analysis of this paper is limited to the case in which there is an armed conflict, the question is whether an armed conflict could generate the exceptions above. If the conflict is completely unexpected and the amount of violence is so high that for the defending state it is absolutely and materially impossible to comply with the right to food, the *force majeure* could be invoked, but it cannot, *in re ipsa*, be considered a situation that automatically triggers those exceptions.

The second issue is to determine whether the right to food is part of customary law. This point is important because, even if the ICESCR is widely ratified, some States, such as Saudi Arabia, Singapore and the United States of America, have not ratified it. According to some scholars, the minimum content of the right to food is part of customary law (Narula, 2006, pp. 791-797). From this perspective, the *opinion iuris* and *usus* that support the formation of the norm are evident in the different branches of international law. First, States have widely ratified several treaties that contain the right to food in its different declinations (such as the ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child). In addition, as previously seen, customary norms that regulate the right to food in armed conflict in IHL are discernible. Moreover, several UN Security Council Resolution and UN General Assembly Resolutions underscore the importance of the right to food. Although UN General Assembly Resolutions are not binding on member States, they could reflect the *opinio iuris* of States. Some examples are Resolution 57/226 and 58/186. A further element supporting the existence of *opinion iuris* and State practice that is suitable for creating the customary norm is the discipline of sanctions in the UN framework. The Security Council, in imposing sanctions and embargoes, has always considered the need to minimize the harm to the population (Narula, p. 75-76), and in practice this reflects the necessity to provide food to the population of the State under sanctions or embargoes. Furthermore, also declarations and national legislations underline the role of customary norm of the right to food. Regarding its content, *opinion iuris* and State practice suggest that customary law only extends to the right to be free from hunger (Narula, p. 80 et seq.).

4. Conclusion: The Question of Compatibility between IHL and IHRL Obligations

The final question is whether the obligations provided by IHL and IHRL are compatible and, if not, which one should prevail. As demonstrated, IHL obligations relating to starvation include the prohibition of starvation as a method of warfare, the obligation to allow humanitarian relief operations, and, therefore, the obligation to facilitate them. Under IHRL, States have the obligation to ensure, according to customary and treaty law, the right to food, considering that the right to be free from hunger for their citizens and for the population who are, even temporarily, under their jurisdiction, is not subject to limitation. According to Jenks, there is a conflict of norms when a party to two or more international treaties "cannot simultaneously comply with its obligations under both treaties" (Jenks, 1943, p. 426). The same concept is also applicable to customary law. When a conflict of norms exists, several questions arise from legal doctrine and jurisprudence. In the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice (ICJ) clearly stated that the principle of *lex specialis derogat legi generali* should be applied as a technique of interpretation in case of contrast of two or more norms simultaneously applicable. In the relationship between IHL and IHRL, IHL is considered, by the Court, as *lex specialis*, and so it shall be applied in case of conflict of norms. Nonetheless, this technique of interpretation has been subject to an evolution. The Court itself has underlined that IHRL should be applied concurrently in case of armed conflict (e.g.: ICJ, 2005, par. 216; ICJ, 2024, par. 84 et seq.; ICJ, 2025, parr. 146 et seq.; ICJ, 2004, par. 102 et seq.). Regarding the principle applicable in resolving the conflict of norms, it should be noted that, in this case, there is no conflict among the applicable norms and, consequently, among the obligations that arose from those provisions.

As shown, the obligations mentioned above are not in conflict with each other; rather, they are complementary. According to Giacca, "complementarity means that ESC rights and IHL are mutually influencing when they impose certain obligations that overlap." (Giacca, 2014, p. 186). According to this interpretation, rules that are applicable in the same situation and that derive from IHL and IHRL should be interpreted in light of one another. This means that the treaty rules and obligations concerning the right to food, in the context of armed conflicts, shall be interpreted considering the treaty and customary provisions of the applicable IHL rules. Concurrently, the treaties provisions on starvation as a consequence of acts of warfare in armed conflict shall be interpreted in light of the treaty and customary IHRL rules and obligations applicable to the parties. The same logic of interpretation could also be applied to the applicable customary rules and obligations. This systematic approach to the interpretation of the relevant rules is capable of providing coherence and predictability to international law, avoiding fragmentation and artificial separation between branches of international law (Giacca, p. 185).

In conclusion, it has been shown that starvation during armed conflicts is an unlawful phenomenon, both as a method of warfare and as a consequence of warfare. Even if the purposes of the norms under IHL and IHRL are partially different – in the first case the goal is to prevent the population from being starved, while in the second case the protection is broader, and it concerns also qualitative standards – the norms are

simultaneously applicable. The principle of human dignity, coupled with the simultaneous and complementary application of the invoked norms, could allow for the creation of a normative framework whereby the occurrence of starvation in armed conflicts generates obligations for States to protect civilians under their jurisdiction and eliminate its effects.

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