

THE RIGHT TO FOOD, DELIBERATE STARVATION, AND THE EU’S RESPONSE TO INTERNATIONAL COURTS’ RULINGS

Anna ORIOLO¹

Abstract: *This article examines starvation as a crime of global concern, particularly in situations of conflict and humanitarian emergencies, and the European Union’s role in combating this crime. The analysis focuses on the international and European legal framework on the right to food, the impact of armed conflict on this right, and the use of starvation as a method of warfare. The article concludes with a critical assessment of the EU’s response to food security threats, specifically in relation to the recent Israeli-Palestinian crisis.*

Key words: *European Union, International Courts, Right to Food, Starvation, War Crimes*

1. Introduction

“On 9 October 2023, Israel announced its starvation campaign against Gaza”. This statement opens the Report of Michael Fakhri, United Nations Special Rapporteur on the Right to Food, presented to the UN General Assembly on 24 July 2024 (UN A/79/171). The Report establishes the relationship between the right to food and the prevention of hunger, emphasizes the importance of Palestinian food sovereignty, and underscores starvation as a profound human rights violation. The Special Rapporteur also remarked, “Never in post-war history had a population been made to go hungry so quickly and so completely as was the case for the 2.3 million Palestinians living in Gaza” (UN A/79/171, para. 1).

According to the Integrated Food Security Phase Classification (IPC) – a multilateral global initiative aimed at improving food security and analyzing global nutrition – the level of hunger reached in Gaza has reached phase 5, the highest level, signifying a catastrophe (IPC, 2024, pp. 4-5).

On 15 March 2024, UN Secretary-General António Guterres warned, “1.1 million people in Gaza are facing catastrophic hunger – the highest number of people ever recorded – anywhere, anytime. This is an entirely manmade disaster”. EU High Representative Josep Borrell also addressed the disaster and famine in a statement on 24 March 2024,

¹ University of Salerno (Italy), aoriolo@unisa.it.

remarking “Gaza is already facing famine [...] Hunger cannot be used as a weapon of war. What we are seeing is not a natural hazard but a manmade disaster [...] The situation has gone beyond catastrophic” (STATEMENT/24/1541).

These considerations underscore that armed conflict, whether national or international, is one of the greatest threats to the enjoyment of the right to food, along with health emergencies and environmental hazards.

However, unlike the latter two risk factors, armed conflicts are characterized by the fact that the starvation of civilians is not only a “physiological” consequence of hostilities, but is also “deliberately” and increasingly used as a method of warfare by warring parties. The Israeli-Palestinian conflict exemplifies this troubling dynamic and illustrates the intersection between the right of civilians to food (Hutter, 2022), the use of starvation as a weapon of war (Rosebland, 1973; D’Alessandrai & Gillet, 2019; Kanfash & Aljasem, 2022), and the corresponding accountability of States and individuals for violations of human rights and international humanitarian law (Pejic, 2001).

Both the International Court of Justice (ICJ) and the International Criminal Court (ICC) have recently been called on to address responsibility for violations of the right to food and other crimes committed in Gaza.

The responses of EU member States to the intervention of these two leading international courts have been remarkably inconsistent, raising significant concerns and prompting several reflections worth sharing.

To this end, this paper is divided into three parts: First, an overview of the international and European legal frameworks on the right to food, with an emphasis on key terminological differences; second, an analysis of starvation as a crime under international humanitarian law and international criminal law; and finally, an examination of the EU’s position and contributions to addressing the crime of starvation affecting civilians in ongoing conflicts.

2. The Right to Food: Regulatory Framework, Definitions, and Distinctions

International human rights law explicitly addresses the right to food in the broader context of the right to an adequate standard of living, for example, in Art. 25 of the 1948 Universal Declaration of Human Rights and Art. 11 of the 1966 International Covenant on Economic, Social and Cultural Rights, the latter also covering the fundamental right of everyone to be free from hunger and to have access to adequate food.

The right to food is also recognized in several international conventions that protect specific groups. These include the 1979 Convention on the Elimination of All Forms of Discrimination against Women (Art. 12(2)), the 1989 Convention on the Rights of the Child (Art. 24(c)), and the 2006 Convention on the Rights of Persons with Disabilities (Art. 28(1)).

International humanitarian law protects civilians and prisoners of war by ensuring their access to food and water during armed conflict. It explicitly prohibits the deliberate starvation of civilians as a method of warfare in both international and non-international armed conflicts, as set forth in Art. 54 of Additional Protocol I and Art. 14 of Additional Protocol II of 1977 to the 1949 Geneva Conventions.

Under international criminal law, violations of this protection may constitute war crimes if committed during an international conflict (Art. 8 ICC Statute). In addition, such acts may constitute crimes against humanity if they are part of a widespread or systematic attack directed against a civilian population (Art. 7 ICC Statute), or even genocide if they are committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group (Art. 6 ICC Statute and Art. II of the 1948 Genocide Convention).

The right to food is also recognized in various regional instruments, such as the 1988 Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights, known as the San Salvador Protocol (Art. 12), the 1990 African Charter on the Rights and Welfare of the Child (Art. 14(2) (c) and (d)), and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Art. XV).

Although other general or regional international instruments do not explicitly address the right to food, it is implicitly derived from (and may compromise) the enjoyment of other fundamental human rights. These include the right to life, the right to health, the right to economic, social and cultural development, and the right not to be subjected to inhuman or degrading treatment or torture, which together support the broader concept of human dignity.

This is evident in European Union law, where the right to food, although not explicitly mentioned, is implicitly linked to the right to health in Art. 9 of the Treaty on the Functioning of the European Union (TFEU). This link is reflected in EU action to combat major health scourges, including serious cross-border health threats, as set out in Art. 168 TFEU. In addition, Art. 11 TFEU promotes sustainable development by requiring the integration of environmental protection into the definition and implementation of EU policies and activities. The relationship between the right to food, health, and environmental sustainability is clearly demonstrated in the EU's "Farm to Fork" strategy, which serves as the "food component" of the EU Green Deal (COM/2019/640 final). This ten-year strategy aims to create food systems that are fair, healthy, and environmentally sustainable, ensuring that food is accessible to all by incentivizing farmers to adopt sustainable practices.

In international law, the right to food is reaffirmed in several soft law instruments, i.e., non-legally binding rules (Di Turi, 2021), such as the Right to Food Guidelines adopted by consensus by the UN Food and Agriculture Organization (FAO) in November 2004.

In this sense, the definition offered by the UN Special Rapporteur Ziegler (16 October 2005) on the right to food is also relevant, as it refers to "The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear".

This definition outlines not only the right to be free from hunger but also the right to feed oneself "in dignity".

Therefore, to allow the full enjoyment of this right, food must be *available*, *accessible*, and *adequate*.

Availability refers to the need to obtain food from natural resources, such as growing crops, raising livestock, fishing, hunting, or gathering. It also includes the need for food to be readily available for purchase in markets and shops.

Accessibility ensures both *economic* and *physical* access to food. Economic accessibility means that food must be affordable, allowing individuals to purchase a nutritious diet without sacrificing other essential needs such as health care, education, or housing, for example, ensuring that minimum wages or social security benefits are sufficient to cover the cost of nutritious food along with other basic expenses. Physical accessibility ensures that food is available to everyone, including physically vulnerable groups such as children, the sick, people with disabilities, and the elderly, who may have difficulty accessing food on their own. It also includes ensuring access to food for people living in remote areas, victims of armed conflict or natural disasters, and prisoners. For example, improving infrastructure to facilitate access to markets by public transport can help ensure that people in remote areas have reliable access to food.

Adequacy means that food must meet the *nutritional needs* of individuals, taking into account factors such as age, health status, living conditions, occupation, and gender. For example, infant formula that lacks essential nutrients for physical and mental development is inadequate. Similarly, foods that are high in energy but low in nutrients, contributing to obesity and other health problems, are also considered inadequate. In addition to meeting nutritional requirements, food must be *safe* for human consumption, free from harmful substances such as contaminants from industrial or agricultural processes, including pesticide residues, hormones, or veterinary drugs. Adequate nutrition should also be *culturally acceptable*. For example, food aid that contains items that are prohibited by religious or cultural beliefs or do not conform to local eating habits would not be considered culturally acceptable.

In this context, the right to food should be distinguished from the concept of *food sovereignty*, an emerging idea that emphasizes the right of people to define their own food and food production systems (*e.g.*, agriculture and fisheries) and the degree of self-sufficiency they wish to achieve. It also involves protecting domestic food production and regulating trade to ensure sustainable development.

In addition, *food security* differs from these concepts because it encompasses two key aspects that significantly affect human well-being. First, food security, understood as freedom from fear, ensures physical, economic, and social access to sufficient, safe, and nutritious food for all. Second, food quality is ensured through food safety, which includes the production, handling, preparation, and storage that ensure food is safe for consumption and prevents the onset of disease.

3. The ICJ's 2024 Arrest Warrants for the Deliberate Starvation of Civilians in Gaza

Art. 8(2)(b)(xxv) of the ICC Statute explicitly criminalizes the act of “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival”, including food, water, fuel, and medicine, as well as intentionally obstructing humanitarian relief efforts as defined in the Geneva Conventions.

A relevant problem could arise from the fact that Art. 8(2) of the ICC Statute states that war crimes include “violations of the laws and customs applicable in international armed conflict” (*i.e.*, between two or more States). However, international criminal tribunals have often sought to address this limitation through judicial interpretation. For example, they have applied the principle of internationalization of conflicts, treating internal armed conflicts as international if a State intervenes or controls one of the warring parties.

A similar problem has arisen for the ICC Prosecutor in relation to the recent Israeli-Palestinian crisis. On 21 November 2024, ICC Pre-Trial Chamber I issued arrest warrants requested by the ICC Prosecutor on 20 May 2024 for war crimes and crimes against humanity allegedly committed on the territory of the State of Palestine, specifically in the Gaza Strip (ICC-01/18-374). The warrants name Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant, for, *inter alia*, starving civilians as a method of warfare, constituting a war crime.

The arrest warrant was kept confidential to protect the identities of victims and witnesses, but in its application to the Court, the Office of the Prosecutor (OTP) sought to indict Netanyahu and Gallant as “two of those most responsible” (OTP, Statement 2024) for the alleged crimes, both as co-perpetrators and superiors (considered an aggravating factor) under Arts. 25 and 28 of the Rome Statute.

To overcome the limitation of the nature of the conflict imposed by Art. 8(2) of the ICC Statute, the OTP argued that the alleged war crimes occurred within the context of both an international armed conflict between Israel and Palestine and a non-international armed conflict between Israel and Hamas (along with other Palestinian armed groups), “running in parallel” (OTP, Statement 2024). The OTP presented evidence, including interviews with survivors, eyewitness testimony, authenticated videos, photographs, satellite imagery, and statements by the alleged perpetrator group, to show that Israel deliberately and systematically deprived the civilian population in Gaza of indispensable goods for survival, thereby also highlighting the potential constitutive elements of genocide (the specific intent to destroy, or *dolus specialis*) and crimes against humanity (the systematic targeting of civilians).

The Panel of Experts on International Law, convened to assist in the review of evidence and legal analysis for the arrest warrant request, identified a number of actions that constitute starvation under Art. 8(2) of the ICC Statute, including: the siege of Gaza and the closure of border crossings; arbitrary restrictions on the entry and distribution of essential goods; disruption of electricity and water supplies; severe restrictions on access to food, medicine, and fuel; attacks on facilities that produce food and clean water; attacks on civilians attempting to obtain relief supplies; and attacks on humanitarian workers and convoys delivering aid. Based on the Panel Report, the OTP argued that these actions were part of a coordinated plan to use starvation as a method of warfare in order to: (i) eliminate Hamas,

(ii) secure the release of hostages held by Hamas, and

(iii) collectively punish the civilian population of Gaza, which Israel “perceived as a threat”.

According to the Prosecutor, the effects of the use of starvation as a method of warfare, in combination with other attacks and collective punishment against the civilian population of Gaza, are “acute, visible, and widely known”. These effects have been confirmed by numerous witnesses interviewed by the OTP, including local and international medical professionals, and have resulted in malnutrition, dehydration, profound suffering, and an increasing number of deaths among the Palestinian population, particularly infants, children, and women.

The element of specific intent emphasized by the Prosecutor is crucial to the commission of the crime of genocide, as set forth in Art. II(c) of the 1948 Genocide Convention, which prohibits “deliberately inflicting on the [protected] group conditions of life calculated to bring about its physical destruction in whole or in part”. Nevertheless, while genocide is not explicitly listed in the ICC Prosecutor’s application for arrest warrants in the case concerning the Palestinian situation, the notion of genocide appears directly in the ICJ’s advisory and precautionary rulings concerning the Occupied Palestinian Territories, as explained next.

4. The ICJ’s 2024 Orders and Advisory Opinion on the Starvation of the Palestinian People in the Occupied Territories

The Israeli-Palestinian crisis has also posed significant challenges to the ICJ, both in a contentious case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v. Israel*) (ICJ, *South Africa v. Israel case*), which resulted in the issuance of three orders (on 26 January 2024, 28 March 2024, and 2 May 2024) imposing provisional measures, and in the Advisory Opinion of 19 July 2024, requested by the UN General Assembly on the Legal consequences of Israel’s policies and practices in the Occupied Palestinian Territories, including East Jerusalem.

In its Application instituting proceedings against Israel, South Africa contended that at least some, if not all, of the acts committed by Israel in Gaza in the aftermath of the attack of 7 October 2023 fall within the provisions of the 1948 Genocide Convention and asked the ICJ to take urgent *interim* measures to prevent an acute worsening of the already “catastrophic” levels of hunger affecting Palestinians in Gaza (para. 142).

First, the ICJ concluded that it had *prima facie* jurisdiction to hear the case under Art. IX of the Genocide Convention, which provides that all disputes between the parties concerning the interpretation, application, or fulfillment of the Convention shall be submitted to it.

Turning to the issue of starvation, the ICJ found a “plausible” risk of genocide against the Palestinian population in Gaza (Order of 26 Jan. 2024, para. 54) and deemed the adoption of provisional measures necessary to avoid “irreparable prejudice” (*id.*, para. 74). Specifically, the ICJ’s orders required Israel, *inter alia*, to comply with its obligation to prevent genocide under the 1948 Convention, to ensure the provision of basic services and humanitarian assistance, including food, water and electricity, and to report to the ICJ on the measures taken.

In determining whether it had jurisdiction under Art. 96 of the UN Charter and Art. 65 of the ICJ Statute to issue an Advisory Opinion on Israel's presence in the Occupied Palestinian Territories, the ICJ found that the question on which it is was requested to render an opinion was a "legal question" and that there were no compelling reasons for refusing the General Assembly's request (paras. 22-50). In its Opinion, the ICJ found that all of Israel's policies and practices, as well as its continued presence in the Occupied Palestinian Territory, were contrary to international law (paras. 103-243).

However, the Opinion does not explicitly refer to the right to food of the affected civilian population. Nevertheless, it is particularly relevant to our current analysis for two reasons.

First, the Advisory Opinion contains an interesting reference to the food sovereignty of the Palestinian people through its ruling on the exploitation of natural resources by the occupying power. Specifically, the Court found that Israel's exploitation of natural resources in the Occupied Palestinian Territory violated its obligation to respect the Palestinian people's right to permanent sovereignty over those resources (para. 133).

Second, the Advisory Opinion addressed the legal consequences of Israel's internationally wrongful acts with respect to UN member States (paras. 280-283) and other nations (paras. 273-279). In particular, in view of the illegality of Israel's continued presence in the Occupied Palestinian Territory and the nature and significance of the rights and obligations involved, the Court emphasized that "all States" are under an obligation to refrain from recognizing as legal the situation resulting from Israel's unlawful presence (para. 279). States must also refrain from engaging in economic or commercial transactions with Israel in relation to the Occupied Palestinian Territory or parts thereof, as such activities could entrench its unlawful presence. Furthermore, States are required to avoid actions that imply recognition of Israel's illegal presence, such as establishing or maintaining diplomatic missions in a manner that supports its claims, and to take measures to prevent trade or investment relations that contribute to the maintenance of this illegal situation (para. 278). Furthermore, in the Court's Opinion, all States parties to the Fourth Geneva Convention have an obligation, in accordance with the Charter of the United Nations and international law, to ensure Israel's compliance with international humanitarian law as set forth in the Convention (para. 279). This includes, as mentioned above, the prohibition to attack, destroy, remove or render useless objects and goods essential for the enjoyment of the right to food and, more generally, for the survival of the civilian population.

5. Conclusions

The EU's support for recent judicial assessments of human rights abuses is vital to advancing the prosecution of intentional starvation as an international crime and, more broadly, to address immunity for *jus cogens* violations.

Regrettably, EU States have responded differently to the ICJ and ICC rulings, sometimes even changing their initial positions over time.

In particular, on 18 September 2024, 12 out of 27 EU member states abstained and 2 even voted against the UN General Assembly resolution, which was largely in line with the ICJ's Advisory Opinion.

Regarding the ICJ's precautionary measures, in the European Council conclusions of 17 October 2024, EU leaders reaffirmed Israel's right to defend itself and the EU's commitment to Israel's security and regional stability (para. 18), while deploring the unacceptable number of civilian casualties in Gaza and the West Bank, as well as the catastrophic levels of hunger and imminent risk of famine caused by the insufficient flow of aid to Gaza, recalling "the need to fully implement the International Court of Justice orders" (para. 22).

On the ICC arrest warrants, despite Josep Borrell's declaration that ICC decisions "have to be respected and implemented" by member States, European leaders showed mixed reactions. These include Hungary's explicit opposition to the Court's decision, Germany's dilemma over the appropriate response, Belgium's "full" support of the ICC statutes, Italy's "formal" respect of the obligation to cooperate with the Court while considering its decision "wrong", and France's initial position "in line with the ICC's statutes" that was later undermined by its offer of immunity to Netanyahu from the ICC arrest warrant.

The EU's dissonance regarding the recent international decisions on violations in Gaza risks undermining the effectiveness of international justice. Unfortunately, there are no explicit references to the protection of the right to food in the EU Treaties, the EU Charter of Fundamental Rights, or the 1950 European Convention on Human Rights, to which both the EU Treaty and the Charter refer.

However, the EU could use another instrument in the fight against deliberate starvation, namely the Global Human Rights Sanctions Regime, established by Council Decision (CFSP) 2020/1999 of 7 December 2020. This Regime, which concerns restrictive measures against serious violations and abuses of human rights, enables the EU to target individuals, entities, and bodies – both State and non-State actors – responsible for, involved in, or associated with serious violations and abuses of human rights worldwide.

Restrictive measures include visa bans or freezing of assets, which, according to para. 1 of the Decision, apply to genocide, crimes against humanity and other serious violations or abuses of human rights. In applying para. 1, account should be taken of customary international law and universally recognized instruments of international law, including those that explicitly prohibit starvation. These include the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities and the Rome Statute of the International Criminal Court.

In our view, EU States, as members of the UN, are obligated to comply with ICJ rulings and to assist the ICC in arresting and surrendering suspects in accordance with the obligations set forth in the ICC Statute. The judicial determination of the illegality of the situation in Gaza thus provides a crucial basis for legitimizing the EU's anti-crime regime as a *provider of global justice*, ensuring that war crimes and other egregious abuses that offend the "human conscience" are not justified under the guise of *raison d'État*.

Acknowledgements

The Author is very grateful to the staff of International & European Criminal Law Observatory (IECLO) and Jean Monnet Module EU-GLOBACT, more precisely, Stefano Busillo and Emanuele Vannata for the editorial and research support in finalizing this paper.

References

- D'Alessandrai, F., & Gillet, M. (2019). The War Crime of Starvation in Non-International Armed Conflict. *BSG Working Paper Series*, 31, 1-28. Retrieved from <https://www.bsg.ox.ac.uk/sites/default/files/2019-11/BSG-WP-2019-031.pdf>.
- Di Turi, C. (2021). *Il diritto all'alimentazione nell'ordinamento giuridico internazionale. Norme, prassi, tutela*. Naples: Editoriale Scientifica.
- Hutter, S. (2022). The Right to Food in Armed Conflict. In B. Conley, A. de Waal, C. Murdoch, & W. Jordash (Eds.), *Accountability for Mass Starvation: Testing the Limits of the Law* (pp. 132-152). Oxford: OUP.
- ICP (2024). *Famine Review Committee: Gaza Strip, Conclusions and Recommendations* (pp. 4-5). https://www.un.org/unispal/wp-content/uploads/2024/06/IPC_Famine_Review_Committee_Report_Gaza_June2024.pdf
- Kanfash, M., & Aljasem, A. (2022). Starvation as Strategy in the Syrian Armed Conflict: Siege, Deprivation, and Detention. In B. Conley, A. de Waal, C. Murdoch, & W. Jordash (Eds.), *Accountability for Mass Starvation: Testing the Limits of the Law* (pp. 195-216). Oxford: OUP.
- OTP (2024). *Statement of ICC Prosecutor Karim A.A. Khan K.C.: Applications for arrest warrants in the situation in the State of Palestine*. 20 May.
- Pejic, J. (2001). The Right to Food in Situations of Armed Conflict: The Legal Framework. *International Review of the Red Cross*, 83(844), 1097-1109. Retrieved from <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/irrc-844-pejic.pdf>.
- Rosenblad, E. (1973). Starvation as a Method of Warfare: Conditions for Regulation by Convention. *The International Lawyer*, 7(2), 252-270. Retrieved from <https://core.ac.uk/download/pdf/216913859.pdf>.

This article resumes the line of research of previous works, explored in depth within the framework of the Jean Monnet Module EU-GLOBACT “Project funded by European Commission Erasmus + Programme – Jean Monnet Action Project number 101126599. Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.”

