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THE DENIAL OF ACCESS OF HUMANITARIAN ASSISTANCE IN THE YEMENI CONFLICT:
STARVATION AS A METHOD OF WARFARE

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In the landscape of contemporary armed conflicts, where the boundaries of international law are tested and the dignity of civilians hang in the balance, the Yemeni conflict emerges as a complex yet compelling case study. This article embarks on a journey to analyze the crime of starvation within the context of the Yemeni conflict. The inquiry, however, is not merely a matter of academic curiosity; rather, it is a response to the need to unravel the legal and political intricacies surrounding this atrocious violation of International Human Rights Law (“IHRL”), International Criminal Law (“ICL”) and International Humanitarian Law (“IHL”). Furthermore, this article attempts to reignite discourse and awareness about the conflict in the Arab Peninsula, which has regrettably been consigned to the periphery of global attention and often gained the title of the “forgotten war”¹.

Methodologically, the approach of this article is grounded in a legal-political framework, with insights of humanitarian nature coming from sources of different NGOs and international organizations and from interviews of activists and Yemeni organizations². On the one hand, an overview of the national and international laws governing the prohibition of starvation and the relevant substantial data on the Yemeni situation in this regard will elucidate the culpability of the actors involved in the perpetration of this crime. On the other hand, the political landscape of the war is a fundamental starting point to understand the reasons behind the aggressive behaviors of the conflicting parties, which are almost always at the expense of the civilian population.

However, it is important to be aware of the inherent limitations of this article. In fact, in spite of the war spanning nearly a decade, Yemen remains a conflict zone marked by restricted access to relevant sources and actors, logistical challenges, decreasing funding of humanitarian assistance and the ever-present risk of intensification of conflicts. This, along with the inadequate international focus on the

¹J. S. BACHMAN, E. BRITO RUIZ, *The Geopolitics of Human Suffering: A Comparative Study of Media Coverage of The Conflicts in Yemen and Ukraine*, in *Third World Quarterly*, 2023, p. 1 ff.; M. ABDULKADER, *The Forgotten War*, in *Journal of Global Faultiness*, 2023, p. 45 ff.

² Valuable insights and information were gathered through interviews with local activists, human rights defenders, employees at relevant organizations and various firsthand resources (webinars and FDGs) originating from the organizations working inside and outside Yemen. These supplementary resources have significantly enriched the content presented herein. Notably, the three main organizations consulted during the research process were Mwatana for Human Rights, Peace Track Initiative and Yemen Policy Center. Moreover, Nadia Alsakkaf, former Yemeni minister of information, has been interviewed by the author of the article.

conflict, inevitably impacts any attempt to provide a fully comprehensive legal and political analysis of the crime of starvation and its implications in the country.

Moreover, Yemen, despite being officially recognized as a single nation, is deeply divided along regional, political and ideological lines³. These divisions are not only a reflection of the complex dynamics at play, but they also present challenges in ascertaining the responsibility for the crime of starvation as different actors have varying degrees of control and influence in different areas of the country. Therefore, since the political-legal framework is not in favor of Yemeni civilians, this article concludes by encouraging research on the conflict and the crime of starvation in Yemen and by focusing, for the moment, on improving the very needed humanitarian assistance.

1. Introduction to the Yemeni conflict and its political and legal framework

1.1. *History and politics of the Yemeni conflict*

In 2011, the Arab Spring swept through the MENA countries, including Yemen, the poorest nation in the region, where demonstrations erupted against President Ali Abdullah Saleh, who had ruled for over thirty years. After months of peaceful protests, Saleh was removed from the presidency in 2012, succeeded by Abdrabbuh Mansur Hadi. Hadi's election offered hope, especially after he initiated the National Dialogue Conference (“NDC”) to reconcile the Yemeni crisis. The NDC gathered all the political factions, tribes, and groups⁴, and the process was overseen by the UN Special Envoy Jamal

³ N. AL BIDH, *Pandemonium in Yemen: A Historical Analysis of Yemen's Socio-Political State*, in *Journal of South Asian and Middle Eastern Studies*, 2022, p. 84 ff.

⁴ It should be noted that from a sociological point of view, Yemen is characterized by a tribal system, in which leaders of clans and factions are sometimes more important than State officials. In Yemen tribal and social law, *U'rf*, is an important component of the Yemeni law. So, to have success the NDC had to take into account the major Yemeni tribes and include them in the transitional political processes. See: M. BRANDT, *Tribes and Politics in Yemen: A History of the Houthi Conflict*, London, 2017.

Benomar⁵. It concluded in January 2014, establishing an outcome document⁶ and a draft for a new constitution, creating a roadmap for Yemen's transition towards democracy and human rights.

However, the Houthi rebels, a Shia⁷ group which was initially part of the NDC, kidnapped President Hadi's office director⁸, sparking their ascent to power. In 2014, they started conquering many parts of the North of the country until they seized the capital Sana'a, leading to an armed conflict⁹ and forcing Hadi to flee to Aden, a city in the Southern part of Yemen. Concurrently, a coalition of States led by Saudi Arabia¹⁰ was formed to support and restore the formal Yemeni government chaired by Hadi. Not long after, the Houthis started to be supported by Iran, which provided the Shia rebels with weapons¹¹.

Subsequently, in the South of Yemen, the Southern Transitional Council (“STC”) emerged; few months later further fragmentation arose, forcing Hadi and his government to flee to Riyadh in Saudi Arabia¹². At the same time, Al-Qaeda in the Arabian Peninsula gained power, catching the US

⁵ The Office of the Special Envoy of the Secretary-General for Yemen (OSESFY) was appointed by the UN Secretary-General in 2012 with UN Security Council Resolution 2014 (2011). The special envoy exercises his good offices to: facilitate Yemen's transition, provide support to other transition steps, work closely with the members of the Security Council, enable the resumption of a peaceful, inclusive and orderly Yemeni-led transition. The Special Envoy has also facilitated rounds of consultations to obtain a negotiated settlement to end the conflict, including direct talks in Switzerland in June and December 2015, in Kuwait from April to August 2016, in Stockholm in December 2018 and in Riyadh in April 2022. Until now, the appointed special envoys on Yemen have been Jamal Benomar, Ismail Ould Cheikh Ahmed, Martin Griffiths and lastly Hans Grundberg. See: < <https://osesfy.unmissions.org/> >.

⁶ مؤتمر الحوار الوطني الشامل (NATIONAL DIALOGUE CONFERENCE), وثيقة الحوار الوطني الشامل (*Comprehensive National Dialogue Conference Document*), Sana'a, 2014.

⁷ Islam is divided in at least two branches, Sunni Islam and Shia Islam. The majority of Muslim believers are Sunnis, while Shia followers constitute around 10-15% of the Muslim population all over the world. In Yemen, Shias are around 35% of the population.

⁸ See: L. SABIN, *Yemen President's Office director Ahmed Awad bin Mubarak Kidnapped by Suspected Shia Rebels*, available at: < <https://www.independent.co.uk/news/world/middle-east/yemen-president-s-office-director-ahmed-awad-bin-mubarak-kidnapped-by-suspected-shia-rebels-9985030.html> >.

⁹ Armed conflict officially began with the “battle of Sana'a” which started on the 9th September 2014, available at: < <https://www.hrw.org/news/2014/09/14/yemen-lethal-force-against-houthi-protesters> >.

¹⁰ The coalition, initiated with the “Operative Decisive Storm”, was formed by Saudi Arabia, the United Arab Emirates, Egypt, Jordan, Kuwait, Morocco, Qatar and Sudan. See: S. ARRAF, *The Armed Conflict in Yemen: A Complicated Mosaic*, Geneva, 2017; INTERNATIONAL COMMISSION OF JURISTS, *Bearing the Brunt of War in Yemen: International Law Violations and Their Impact on the Civilian Population – a Briefing Paper*, Geneva, 2018.

¹¹ T. JUNEAU, *Iran's Policy Towards the Houthis in Yemen: A Limited Return on a Modest Investment*, in *International Affairs*, 2016, p. 647 ff.

¹² P. SALISBURY, *Yemen's Southern Transitional Council: A Delicate Balancing Act*, in *ispionline.it*, 2021, available at: < <https://www.ispionline.it/it/pubblicazione/yemens-southern-transitional-council-delicate-balancing-act-29793> >.

government's attention, which has been proved to have supported and provided intelligence to the Saudi-led coalition and to local tribes fighting Al-Qaeda¹³.

Today, the conflict in Yemen is persisting, although with less intensity. At least 377 thousand people have been killed¹⁴, among whom 226 thousand Yemenis died as a result of an ongoing famine, starvation and lack of healthcare facilities¹⁵. In April 2022, the warring parties, except for the Houthis, gathered in Riyadh for peace talks and finally agreed on a temporary truce¹⁶ which has been implicitly accepted by the Houthis, even if internal disturbances and violent clashes are still occurring in the country. The Riyadh peace talks also concluded with the replacement of President Hadi with a Presidential Leadership Council of eight members.

In April 2023, significant events transpired: the rapprochement between Iran and Saudi Arabia, mediated by China, has raised hopes of a political settlement to end the conflict in Yemen. The re-establishment of diplomatic relations between the two regional powers could potentially accelerate the peace process. In fact, on the 14th September 2023, for the first time in history, a Houthi delegation fled to Riyadh for a five-days Omani-mediated round of talks to discuss future political agreements¹⁷. This could potentially mark a pivotal moment in bringing the war to a conclusion, although it is necessary that all the parties of the conflict are involved in the peace discussions. Moreover, there is the risk that political agreement is reached but the needs of the Yemeni civilians is not taken into account; therefore, it is fundamental that the Yemeni population is a priority during the peace discussions.

¹³ In February 2021, US president Joe Biden announced an end to US support for Saudi-led offensive operations in Yemen, although the United States continue to sell and send weapons to the countries involved in the conflict. See UN continues to send and sell weapons to countries in the region as a response to Houthis' attacks. See: A. SHELINE, *The Yemen War in Numbers: Saudi Escalation and US Complicity*, in *Quincy Institute for Responsible Statecraft* no. 22, 2022, p. 1 ff.

¹⁴ As of August 2023. See the Global Conflict Tracker, available at: <https://www.cfr.org/global-conflict-tracker/conflict/war-yemen>.

¹⁵ See the Global Conflict Tracker, available at: <https://www.cfr.org/global-conflict-tracker/conflict/war-yemen>.

¹⁶ A. EL YAAKOUBI, *UN presses Yemen warring parties for six-month truce extension*, in *reuters.com*, 2022; "Yemen peace talks give little hope for displaced civilians", available at: < <https://www.aljazeera.com/news/2022/4/1/yemen-peace-talks-give-little-hope-for-displaced-civilians> >; مكتب المبعوث الخاص للأمين العام للأمم المتحدة لليمن (OSESGY), *اتفاق الهدنة (agreements on the truce)*, Riyadh, 2022.

¹⁷ Yemen's Houthis heading to Riyadh for ceasefire talks with Saudi Arabia, 14th September, Al-Jazeera, available at: < <https://www.aljazeera.com/news/2023/9/14/yemens-houthi-rebels-heading-to-riyadh-for-talks-with-saudi-officials> >.

This brief overview clearly demonstrates the Yemeni war is very complex; and, considering the heterogeneity of the parties involved, one of the first legal inquiries revolves around the nature of the armed conflict. This is a recurrent and important issue, since it has direct repercussions on the laws applicable, especially under IHL and ICL.

1.2. *The legal framework of the Yemeni conflict under IHL*

Under IHL, while the customary rules applicable for all conflicts are the same regardless of their nature, to apply the relevant treaties a classification is needed. Under IHL¹⁸, there are two types¹⁹ of armed conflicts, to be identified in order to determine the applicable rules: international armed conflicts (“IACs”) and non-international armed conflicts (“NIACs”). IACs occur when one or more States resort to the use of force against another State²⁰; in contradistinction, NIACs occur when there is “protracted armed violence between governmental authorities and organized armed groups or between such groups²¹”. Specifically, for NIACs, there are two requirements: the non-State armed group should have a certain level of organization and the hostilities must reach a certain level of intensity. There is also a third form of armed conflict, which however is not a proper legal category, and it is the one of internationalized non-international armed conflict. If internationalized internal armed conflicts were officially recognized as a legal category, the Yemeni war would align with the parameters of this classification²².

¹⁸ F. SPARANGA, *Classificare i conflitti: le principali analisi del 2020*, in *IRIAD review – studi sulla pace e sui conflitti*, 2021, p. 4 ss; V. SYLVAIN, *Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations*, in *International Review of the Red Cross*, 2009, p. 69 ss.

¹⁹ In reality International Humanitarian Law identifies two other categories of armed conflict: occupation when a State exercises an unauthorized effective control over a territory on which it has no sovereignty; internal disturbances, which if when the fighting does not meet the threshold of non-international armed conflict.

²⁰ To be more precise, an armed conflict between a State and an international organization is also classified as an IAC. Wars of national liberation, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, are classified as IACs under certain conditions (See Article 1, paragraph 4, and Article 96, paragraph 3, of Additional Protocol I). For further information on the applicability of definition of IACs and NIACs under IHL, see: V. SYLVAIN, *Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations*, *cit. supra* note 18.

²¹ INTERNATIONAL CRIMINAL TRIBUNAL FOR YUGOSLAVIA, appeal judgment 2 October 1995, *Prosecutor v. Dusko Tadić*, IT-94-1-A, 1995 para. 70

²² See: < https://casebook.icrc.org/a_to_z/glossary/internationalized-internal-armed-conflict >.

To give a very general indication, on the one hand, in IACs the four Geneva Conventions (“GC”) and Additional Protocol I (“API”) apply; on the other hand, during NIACs Common Article 3 to the Geneva Conventions and Additional Protocol II (“APII”) are relevant.

International jurisprudence has clarified that international and non-international armed conflicts may co-exist on the same territory²³, which is in fact the case for Yemen. Moreover, there is part of the International Criminal Law jurisprudence which is relevant for the discourse on the distinction between NIACs and IACS also under IHL. In fact, in the *Tadić* case, the International Criminal Tribunal for former Yugoslavia highlighted the growing irrelevance of the legal distinction between IACs and NIACs²⁴. Moreover, the tribunal suggested that in case there are different ongoing IACs and NIACs with foreign interventions happening in the same territory, the whole situation should be considered as an international armed conflict, potentially “upgrading” a non-State armed group to a State level. Nevertheless, the States practice and legal doctrine firmly disagreed, so every conflict should be considered autonomously.

In Yemen there are multiple armed conflicts taking place: the conflict between the internationally recognized government (“IRG”) and the Houthis²⁵; clashes between the IRG and the Al-Qaeda in the Arabian Peninsula²⁶; fights between non-State armed groups in the Yemeni territory²⁷; and, conflicts between the STC and the IRG situated in Riyadh²⁸. The two requirements of a NIAC²⁹, the intensity

²³ INTERNATIONAL COURT OF JUSTICE, judgement 27 June 1986, *Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America)*, case no. 520, in *ICJ Reports*, 1986, para. 219.

²⁴ E. CRAWFORD, *Unequal Before the Law: The Case for the Elimination of the Distinction between International and non-International Armed Conflicts*, in *Leiden Journal of International Law*, 2007, p. 441 ff.

²⁵ A. BELLAL, *The War Report: Armed Conflicts in 2018*, Geneva, 2019.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ See the International Criminal Tribunal for Former Yugoslavia in the *Tadić* case: *The test applied by the Appeals Chamber to the existence of an armed conflict for the purposes of the rules contained in Common Article 3 focuses on two aspects of a conflict; the intensity of the conflict and the organization of the parties to the conflict. In an armed conflict of an internal or mixed character, these closely related criteria are used solely for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law.. Factors relevant to this determination are addressed in the Commentary to Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces*”. ICTY – TRIAL CHAMBER, judgement 7 May 1997, *Prosecutor v. Tadić*, case no. IT-94-1-T, in *ICJ Reports*, 1997, para. 562.

of hostility³⁰ and the level of organization³¹ of the non-State armed groups, are fulfilled in all these conflicts. In fact, the conflicts have all been categorized by the UN Human Rights Council³² and international non-governmental organizations, such as Amnesty International³³ and Human Rights Watch³⁴, as NIACs³⁵.

It is true that there have been interventions by other States, but the official interventions, particularly the Saudi Arabian and US intervention, have occurred upon request of the ousted IRG, excluding for the moment an international armed conflict between the intervening State and the territorial State³⁶. Considering the new trends of NIACs, which often have international actors involved, some experts argue that the four Geneva Conventions and API should ideally be applied to an outside intervention, even if the government consent is obtained³⁷. However, this concept still does not align with State practice³⁸.

So, on the basis that the Yemeni conflict is a conflict not of international character, the relevant applicable IHL is, besides customary international humanitarian law which should be implemented

³⁰ Indicators of the threshold of violence have been given by the International Criminal Tribunal for Former Yugoslavia: “the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent of material destruction; and the number of civilians fleeing combat zones. The involvement of the UN Security Council may also be a reflection of the intensity of a conflict”. ICTY – TRIAL CHAMBER, judgement 3 April 2008, *Prosecutor v. Haradinaj*, case no. IT-04-84-T, in *ICJ Reports*, 2008, para. 49.

³¹ Indicators of the organization of the non-State armed groups have been given by the International Criminal Tribunal for Former Yugoslavia: “indicative factors include the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as cease-fire or peace accords”. ICTY – TRIAL CHAMBER, judgement 3 April 2008, *Prosecutor v. Haradinaj*, case no. IT-04-84-T, in *ICJ Reports*, 2008, para. 60.

³² UN HUMAN RIGHTS COUNCIL, *Report of the Detailed Findings of the Group of Eminent International and Regional Experts on Yemen*, New York, forty-second session 9-27 September 2019, UN Doc. A/HRC/42/CRP.1.

³³ Available at: < <https://www.amnesty.org/en/location/middle-east-and-north-africa/yemen/report-yemen/> >.

³⁴ HUMAN RIGHTS WATCH, *Questions and Answers: the conflict in Yemen and international law*, New York, 2015, available at: < <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law> >.

³⁵ There isn't date a categorization of the Yemeni armed conflict as a NIAC by any international tribunal.

³⁶ See: ICRC, *Commentary on the First Geneva Convention: article 2*, Geneva, 2016, paras. 257-263.

³⁷ M. SASSÒLI, *Armed Conflict in Yemen; An Illustration of the Pertinence and Deficiencies of Existing IHL Rule*, in *Iranian Journal of International and Comparative Law*, 2023, p. 100 ff.

³⁸ *Ibid.*

by all States and non-State armed groups in every context³⁹, Common Article 3 to the Geneva Conventions concerning the minimum provisions to be applied in a NIAC⁴⁰ and the Additional Protocol II relating to the protection of victims of non-international armed conflicts⁴¹. Yemen and all the States belonging to the Saudi -led coalition are parties to the Geneva Conventions and its Additional Protocol II, so they are bound by them. In addition, Article 1(1) of APII provides for the obligation to implement the Protocol also by “armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”. The requirements set in Article 1(1) APII are met at least by one non-State armed group, the Houthis, which today exercise control over a meaningful part of the Yemeni territory⁴².

Notably, the provisions governing the conduct of hostilities between combatants which are contained in Additional Protocol I to the Geneva Conventions relating to the protection of victims in

³⁹ Examples include violence to life and person, widespread and systematic sexual violence, torture and prosecution. Moreover, certain serious violations of customary IHL amount to war crimes when committed with the requisite of mental element, as it has been stated by the International Criminal Tribunal for former Yugoslavia and the International Criminal Court. See also the customary international humanitarian law database, available at: < <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home> >.

⁴⁰ Common Article 3 to the Geneva Conventions: “*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict”.

⁴¹ It should be importantly noted, however, that a more complete overview of international law applicable in armed conflict has already been given in the first chapter of this thesis. So, to better understand what branches of international law are applied, see the previous chapters.

⁴² INTERNATIONAL COMMISSION OF JURISTS, *Bearing the Brunt of War in Yemen: International Law Violations and Their Impact on the Civilian Population – A Briefing Paper*, cit. supra note 10.

international armed conflicts are also applied in NIACs⁴³ as customary international law. These provisions aim to temper military action with limitations and reduce human suffering, particularly of civilians. Among the main principles governing the execution of attacks are distinction⁴⁴, precaution and proportionality.

The occurrence of the armed conflicts in Yemen does not preclude the responsibility of the Yemeni State for the breaches of international obligations in its territory, which can either derive from treaties, including the ones of IHL, or customary international law. The IRG should also control and induce the non-State armed groups to comply with customary International Humanitarian Law.

On their side, non-State actors are not legally responsible for the breaches of international law⁴⁵ except for IHL (considering that they lack legal personality⁴⁶). However, considering the impact that non-State actors have in conflict, particularly the Houthis and the STC, civil society organizations and human rights advocates call for improving non-State armed groups' compliance⁴⁷ with human rights treaties⁴⁸ and not only customary international law. The legal premises to do so are present: indeed, Common Article 3 of the Geneva Conventions fixes accountability on individuals responsible for violating the article, which included individuals acting on behalf of non-State actors. In addition, APII gives some rules, which are not customary yet, that provide for obligations for a better protection of victims of internal conflict⁴⁹ also by non-State actors. For now, there has not been enough discussion on the topic, but further studies and potential jurisprudential application of Common Article 3 and the Additional Protocol II could support the view that non-State actors are bound to comply with human rights and humanitarian treaty rules⁵⁰.

⁴³ *Ibid.*

⁴⁴ Distinction means that “*the parties to the conflict shall at all times distinguish between the civilian population and combatants*”, as Article 48 of Additional Protocol I to the Geneva Conventions states.

⁴⁵ M. SASSÒLI, Y. SHANI, *Should the Obligations of States and Armed Groups Under International Humanitarian Law Really Be Equal?*, in *International Review of the Red Cross Review*, 2011, p. 424 ff.

⁴⁶ O. JURASZ, *The Istanbul Convention: A New Chapter in Preventing and Combating Violence Against Women*, in *Australian Law Journal*, 2015, p. 89 ff.

⁴⁷ E.C. GILLARD, *Promoting Compliance with International Humanitarian Law*, London, 2016.

⁴⁸ C. O'ROURKE, *Women's Rights in Armed Conflict Under International Law*, Cambridge, 2020.

⁴⁹ N. RONZITTI, *Diritto Internazionale dei conflitti armati*, Torino, 2017.

⁵⁰ No further notes on this latter issue will be discussed, as it is beyond the scope of this article. For further information on this topic, see: N. RONZITTI, *Diritto internazionale dei conflitti armati*, *cit. supra* note 49.

2. Starvation as a method of warfare under IHL, ICL and IHRL

For centuries, mass starvation has been used in times of war, oppressions and disturbances and was seen as a natural phenomenon or a side-effect of armed conflict⁵¹. The deprivation of civilians from access to food and water happened for different purposes and reasons: the most obvious reason is the use of starvation as a method of warfare, but denying food could have also been a punishment or a sanction for a given population⁵² or it could have as a goal the complete extermination of the given population⁵³. However, starting from the Lieber Code in 1863⁵⁴ and with the development of IHL, starvation started to be more and more outlawed until the adoption of the four Geneva Conventions and their Additional Protocols⁵⁵ which explicitly prohibit starvation as a method of warfare and assure the protection of civilians during armed conflicts. In 1998, the Rome Statute also acknowledge the use of starvation as an unlawful method of warfare, potentially constituting a war crime in IACs⁵⁶.

2.1 *International Humanitarian Law*

Before mentioning the relevant IHL provisions in relation to the crime of starvation, it is important to remember that as parties to a NIAC, the different Yemeni armed forces (i.e., the IRG and the STC), the Saudi-led coalition, the UAE forces, ideally Al-Qaeda and the Ansar Allah group (i.e., the

⁵¹ B. CONLEY, A. DE WAAL, *The Purposes of Starvation – Historical and Contemporary Uses*, in *Journal of International Criminal Justice*, 2019, p. 699 ff.

⁵² A. BARAM, *The Effect of Iraqi Sanctions: Pitfalls and Responsibility*, in *The Middle East Journal*, 2000, p. 194 ff.

⁵³ S. ROSENBERG, *Genocide is a Process, Not an Event*, in *Genocide Studies and Prevention*, 2012, p. 16 ff.

⁵⁴ Art. 17 of the Lieber Code states that “It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy”. This article has been interpreted in the sense that while it is lawful to starve belligerents, it is unlawful to starve civilians.

⁵⁵ Already the Hague Conventions of 1899 and 1907 contained provisions related to the protection of non-combatants, providing for the minimization of unnecessary suffering. While not explicitly using the term “starvation”, the provisions of the Hague Conventions would indirectly prohibit actions that would lead to the deprivation of food and essential supplies for civilians. Article 23 of the Hague Convention of 1907 states: “It is forbidden to destroy the enemy’s property, unless such destruction be imperatively demanded by the necessities of the war”. This is a key provision related to this issue

⁵⁶ As will be explained later, in 2019, the Rome Statute was amended so that today starvation as a method of warfare constitutes a war crime also in NIACs.

Houthis) are bound by Common Article 3 to the Geneva Conventions⁵⁷. In addition, APII, which, however has a more restrictive scope than Common Article 3⁵⁸, is to be applied in NIACs when specific criteria are satisfied. In fact, Article 1 of APII states that the Protocol, without modifying the conditions of Common Article 3, is applied to all armed conflicts which “take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”. Considering that the Houthis control a large portion of the Yemeni territory and are able to carry out military operations⁵⁹, there is no doubt that the threshold set by APII, which is higher than the one of common article 3, is met. Therefore, the Protocol is applicable to the Yemeni non-international armed conflicts in which the Houthis are involved. Finally, norms that reflect customary international law are to be applied in the Yemeni context, even if they theoretically pertain to IACs.

So, in connection to the crime of starvation, there are at least four articles in the Geneva Conventions and Additional Protocols that worth being mentioned: Article 14 APII and Article 54 API, relating to the prohibition of starvation as a method of warfare; and Articles 18 APII and 70 API relating to relief

⁵⁷ Common Article 3 to the Geneva Conventions: “1. *In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

2. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

3. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

4. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict”.

⁵⁸ J. PEJC, *The Protective Scope of Common Article 3: More Than Meets the Eye*, in *International Review of the Red Cross and Red Crescent*, 2011, p. 881 ff.

⁵⁹ MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warring Parties in Yemen*, Sana’a, 2021.

actions⁶⁰. Considering that the Yemeni conflict consists in a series of non-international armed conflicts, one could argue that the articles of API is not relevant. This is true; nonetheless, their mention is valuable as they reflect customary international law⁶¹ that could potentially influence future developments in NIAC law. Additionally, understanding the principles of Articles 54 and 70 API helps in the interpretation of the relevant provisions found in APII.

The provisions relating to the prohibition of starvation as a method of warfare are Article 14 APII and Article 54 API, with the former article being a “simplified version” of the latter⁶². Both articles start with an important statement: “Starvation of civilians as a method of combat is prohibited”. Subsequently, it is “prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”. Then, while Article 18 APII ends with these two statements, Article 54 API specifies that the prohibition does not apply when the objects indispensable for the survival (“OIS”) are used for other purposes than the ones to serve the civilian population and that OIS cannot be made objects of reprisals.

With regards to Articles 14 APII and 54 APII, two points should be made. The first one is that the list of objects indispensable to the survival of civilians that could be damaged, destroyed etc., in second statement of the two articles are a non-exhaustive list⁶³. While it is true that starvation is, obviously, the central point of the first statement, the OIS extend beyond the mere deprivation of food and

⁶⁰ In the IV GC, Article 23 deals with the consignment of medical supplies, food and clothing. This provision, despite being customary international law, is applicable only in the context of IACs, which is not the case for the Yemeni conflict.

⁶¹ See the ICRC database on customary IHL, rules 53 and 55.

⁶² *Ibid*: “While there are striking differences in the ways in which the AP I and AP II prohibitions are drafted—the AP I version being much longer and of a seemingly more complex construction—it may be that these differences were not necessarily intended to create substantial differences to the substantive obligations imposed on parties. In general, the drafters of AP II were cautious about creating and assigning rights to non-State armed groups, and drafted the AP II obligations and prohibitions accordingly”. See also: ICRC, *Commentary to Additional Protocol II* Article 14, para. 4794.

⁶³ F. D’ALESSANDRA, M. GILLET, *The War Crime of Starvation in Non-International Armed Conflict*, in *Journal of International Criminal Justice*, 2019, p. 815 ff.

nourishment. This is suggested by the title of both articles, “protection of objects indispensable to the survival of the civilian population”, which indicate the wider breadth of coverage⁶⁴.

The second point relates to whether the prohibition requires that the party engaged in the conduct has or does not have to act with the specific intent to cause starvation. This is an important question for the Yemeni conflict: for example, as will be elaborated upon later, the Saudi-led coalition has imposed a *de facto* aerial, land and maritime blockade on the Yemeni territory to weaken the Houthis’ position. While the specific intention of the coalition may not have been to induce starvation, the ultimate result is that Yemenis are starving also because of this blockade⁶⁵. An answer to this inquiry could potentially involve the Saudi-coalition’s responsibility under IHL.

While the general prohibition of starvation requires the element of the specific purpose to cause famine among the civilian population⁶⁶, there are other more specific rules directed at reducing food insecurity that do not necessitate such purpose. The most important case relates to the situation in which starvation is an indirect consequence of attacking non-civilian objects or civilian objects used for military purposes. For example, Article 54(3) API⁶⁷ suggests that attacks and related actions against OIS used in direct support of military action may not be taken if they are expected to leave the civilians with inadequate food or water. This article states that, in substance, starvation of combatants is not prohibited, but it should take into account the food security of civilians⁶⁸. Going back to the example of the Saudi-led coalition’s blockade, while this is an attack against the Houthis, it *de facto* targets civilians in an indiscriminate and disproportionate way, causing starvation of civilians⁶⁹. In this case, there is not a specific purpose to cause famine against the civilians (the target

⁶⁴ *Ibid.*

⁶⁵ K. BECKERLE, *Hiding Behind the Coalition: Failure to Credibly Investigate and Provide Redress for Unlawful Attacks in Yemen*, in *hrw.org*, 2018, available at: < <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful> >.

⁶⁶ See ICRC Commentary to the Geneva Conventions and Additional Protocols.

⁶⁷ Which, we repeat for the sake of clarity, should be applicable for the Yemeni NIAC as it reflects customary international law even if it’s an article relating to the protection of victims in IACs.

⁶⁸ The article also reflects the general IHL principles of proportionality and distinction, so that civilians do not starve as a consequence of an indiscriminate attack. See: J. CROWE, K. WESTON-SCHEUBER, E. ELGAR, *General Principles of International Humanitarian Law*, Cheltenham and Northampton, 2013.

⁶⁹ M. SASSÒLI, *Armed Conflict in Yemen; An Illustration of the Pertinence and Deficiencies of Existing IHL Rule*, see *supra* note 37.

of the attack is the Ansar Allah group), but the crime of starvation happens in any case. And, while it can be argued that the blockade did not have the specific purpose of causing starvation among the civilian population, Articles 14 APII and Article 54 API could potentially be relevant to invoke the responsibility of the States which are part of the coalition.

Alongside with the direct prohibition of intentional starvation of civilians as a method of warfare, the Geneva Conventions and Additional Protocols provide an obligation to allow ‘timely and unimpeded passage of humanitarian goods and consignments⁷⁰’. Irrespective of the nature and intensity of hostilities, all parties to a conflict are under the legal obligation to allow and facilitate the passage of humanitarian aid⁷¹. In a sense, this obligation to guarantee relief actions is complementary to the prohibition of starvation of civilians. These articles emphasize the fundamental principles of humanity, impartiality, neutrality and independence in the delivery of humanitarian actions during armed conflict. Parties to the conflict should agree and facilitate the relief actions, and any interference with the humanitarian assistance efforts constitutes a breach of international humanitarian law.

In the context of NIACs, the distribution of aid under IHL is a more delicate activity compared to IACs; the sensitivity of the delivery relief actions is reflected in Article 18 APII, which only relates to non-international conflicts. Indeed, IHL has had for decades a State-centric approach⁷², which transpires in the whole Additional Protocol II. In particular, Article 18 APII is rather equivocal⁷³, when it states that relief actions “of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction, shall be undertaken subject to the consent of the High Contracting party consent”. The provision is based on the principle that States are responsible for

⁷⁰ F. D’ALESSANDRA, M. GILLET, *The War Crime of Starvation in Non-International Armed Conflict*, in *Journal of International Criminal Justice*, 2019, p. 815 ff.

⁷¹ This legal obligation is even stricter in cases of occupied territories, where the occupying party has the obligation to ensure the food and medical supplies for the population (art. 55 GC IV). This, however, is not the case for the Yemeni armed conflict.

⁷² F. LATTANZI, *Humanitarian Assistance*, in A. CLAPHAM, P. GAETA, M. SASSÒLI (eds.), *The 1949 Geneva Conventions: A Commentary*, Oxford, 2015, p. 250 ff.

⁷³ F. D’ALESSANDRA, M. GILLET, *The War Crime of Starvation in Non-International Armed Conflict*, in *Journal of International Criminal Justice*, 2019, p. 815 ff.

organizing relief⁷⁴, although in NIACs this can be impossible. For example, how can the IRG, a government which is not residing in its own country, facilitate relief actions in the Houthi-controlled areas, against which the IRG itself is fighting?

Nevertheless, all parties to the conflict (even non-State actors) may be held responsible for the violation of Article 18 APII and customary international law where they arbitrarily withhold their consent for the delivery of relief operations⁷⁵ or fail to comply with the obligation to allow and facilitate the rapid and unimpeded passage of humanitarian relief.⁷⁶

Articles 14 and 18 APII should be interpreted together, because they all derive from the general principle of humane treatment of all persons not participating in hostilities laid in Common Article 3 to the Geneva Conventions⁷⁷. Article 18 APII (and the relevant customary international law) does not explicitly fit in with the case of starvation as a method of warfare; in fact, Article 14 APII does not mention the obstruction of humanitarian assistance. At the same time, this conduct may meet the definition of starvation as a method of warfare under Article 14 APII when the obstruction is carried out for the purpose of starving the civilian population⁷⁸.

2.2. *International Criminal Law*

Yemen is not a party to the Rome Statute, nor are the States which are part of the Saudi-led coalition (except for Jordan). Nevertheless, it is important to acknowledge the Rome Statute for at least two reasons. The first one is that ICL may complement IHL⁷⁹ in providing to researchers and practitioners a comprehensive understanding of what is starvation of civilians as a method of warfare and how it

⁷⁴ Y. SANDOZ, C. SWINARSKI AND B. ZIMMERMANN (eds), *Commentary to the Additional Protocols of 8 June 1977 to the Geneva Conventions of 1949*, Geneva, 2020.

⁷⁵ D. AKANDE, E.C. GILLARD, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, Oxford, 2016.

⁷⁶ *Ibid.*

⁷⁷ MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warring Parties in Yemen*, *cit. supra* note 59.

⁷⁸ *Ibid.*

⁷⁹ F. G. PINTO, *The International Committee of the Red Cross and the International Criminal Court: Turning international humanitarian law into a two-headed snake?*, in *International Review of the Red Cross*, p. 745 ff.

should be dealt with. The second reason is that the prosecution of individuals for the war crime of starvation of civilians may occur even if Yemen does not adhere the Rome Statute, either directly through a referral by the UN Security Council⁸⁰ to the International Criminal Court (“ICC”) or indirectly through the implementation of universal⁸¹ or extraterritorial jurisdiction, in which most likely the Rome Statute framework and ICL will be considered⁸².

Under ICL, starvation as a method of warfare is considered a war crime. In 2019, the Assembly of State parties to the International Criminal Court addressed the critical gap in the Rome Statute’s Article 8 concerning war crimes, by amending the Statute to include as a war crime starvation as a method of warfare also for NIACs⁸³. Before the 2019 amendment, starvation as a method of warfare was considered a war crime only for IACs. This amendment was an important step in addressing the legal disparities between IACS and NIACs under ICL; at the same time, the modification aligned the Rome Statute with IHL and relevant customary international law⁸⁴.

ICL requires three elements to establish the offence of war crimes: the contextual elements (i.e., the conduct took place in the context of and linked to an armed conflict and the perpetrator was aware of the factual circumstances that established the existence of the armed conflict itself); the mental element or *mens rea*; and the physical element or *actus reus*. With regards to starvation the *actus reus* would be the deprivation of civilians of OIS and the *mens rea* would be the intention of the perpetration to starve civilians as a method of warfare. Similar to what has been discussed for Article 14 APII, the intent is an important factor to identify the performance of this crime; in addition, in this

⁸⁰ Article 13(b) of the Rome Statute.

⁸¹ INTERNATIONAL COMMITTEE OF THE RED CROSS ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, *Universal Jurisdiction Over War Crimes*, Geneva, 2014. In 2021, the group of eminent experts on Yemen also stated: “third States are encouraged to use all potential forms of jurisdiction, including universal jurisdiction”. See: UN HUMAN RIGHTS COUNCIL, *Report of the Group of Eminent International and Regional Experts on Yemen*, Geneva, forty-eight session 13 September-1 October 2021, UN Doc. A/HRC/48/20, para. 82.

⁸² In reality, the International Criminal Court could also have jurisdiction over the Yemeni territory and citizens if Yemen made a declaration accepting the jurisdiction of the court (art. 12 Rome Statute).

⁸³ The amendment to the Rome Statute came a few months after UNSC Resolution no. 2417, in which the Council drew attention to the link between armed conflict and conflict-induced food insecurity and strongly condemned the use of starvation of civilians in all armed conflicts, regardless of the nature and type of hostilities.

⁸⁴ T. DANNENBAUM, *A Landmark Report on Starvation as a Method of Warfare*, in *justsecurity.org*, 2020, available at: <[17](https://www.justsecurity.org/73350/a-landmark-report-on-starvation-as-a-method-of-warfare/#:~:text=The%20ICC%20Statute%20provisions%20for.(e)(xix)> .</p></div><div data-bbox=)

case, the intent/*mens rea* is a constituting element of the crime. For the *actus reus*, while the crime requires the deprivation of OIS as both a conduct and a consequence, the crime does not seem to require proof of result⁸⁵ (although the actual starvation of civilians is important at the sentencing stage when determining the reparations that the victims need⁸⁶). This is apparent when reading of 8(2)(e)(xix) of the Rome Statute as well as the Elements of Crime⁸⁷. The terminology used in Article 8 refers to the intention to bring about a consequence, but remains silent on the proof of result; therefore, in this instance, proof of actual starvation of civilians is not required⁸⁸.

2.3. *National Law and International Human Rights Law*

At a national level, Yemen's legislation does not have *ad hoc* laws for the prohibition of starvation of civilians. This is comprehensible, given that the Yemeni institutions, which were already fragile before the conflict, struggle to effectively operate in the country and embrace pertinent norms to apply in favor of the civilian population. However, a brief mention of the Yemeni constitution and the relevant norms in terms of application of International Human Rights Law should be made.

The 2015 Constitution, the *Dustur*, which was the result of the NDC process, has not been implemented yet, as the war broke out blocking all democratic institutions and the Houthis are not willing to sign it⁸⁹. This means that the old *Dustur* of 1991 is in force. However, if implemented at any time, the new Constitution could set the basis for a fast advancement of human rights⁹⁰. The new Constitution could potentially change the legal asset of Yemeni institutions, considering that the old *Dustur*, despite affirming the importance of human rights, contains only one article on the

⁸⁵ O. TRIFFTERER, K. AMBOS (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, London, 2022.

⁸⁶ A. CASSESE, P. GAETA (eds.), *Cassese's International Criminal Law*, Oxford, 2013.

⁸⁷ GLOBAL RIGHTS COMPLIANCE, WORLD PEACE FOUNDATION, *The Crime of Starvation and Methods of Prosecution and Accountability – Accountability for Mass Starvation: Testing the Limits of the Law*, The Hague, 2019.

⁸⁸ *Ibid.*

⁸⁹ In order to enter in force, the Constitution needs to be signed by all the parties of the National Dialogue Conference. The only signature missing is the one of the Houthis.

⁹⁰ P. WILLIAMS, T. SOMMADOSSI, A. MUJAIS, *A legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government*, in *Utrecht Journal of International and European Law*, 2017, p. 4 ff.

implementation of IHRL⁹¹. On the contrary, the new Constitution is definitely more attentive to the respect of human rights: there isn't a dedicate article on the right to food *per se*; however, there are two articles dedicated to the right to health (Articles 32 and 55), which can be interpreted in an extensive way and include the right to adequate food and water.

Now, with regards to the international mechanisms on human rights, the right to adequate food, water and freedom from starvation are fundamental international human rights, often related to the right to life⁹². Indeed, they are included (either explicitly or implicitly) in different human rights treaties⁹³.

Yemen is party to many of these international human rights treaties which deal with the right to food. As a UN member State, Yemen adheres to the UN Charter and the International Declaration of Human Rights, in which Article 25 states the right of adequate standard of living for the health and well-being everyone, including food. Moreover, Yemen has ratified the International Covenant on Economic, Social and Cultural Rights and its Article 11 on the right to adequate standards of living, but it has not accepted the individual complaints procedure of the conventions. It should be noted that some States involved in the Yemeni conflict, most notably Saudi Arabia, are not parties to the ICESCR, so, unless the covenants' provisions correspond to customary international law⁹⁴, they are not binding

⁹¹ Article 5 of the 1991 Constitution: “*The State shall abide by the United Nations Charter, the Universal Declaration of Human Rights, the Charter of the League of Arab States and the generally accepted norms of international law*”.

⁹² OHCHR, *Fact Sheet no. 34 – The Right to Adequate Food*, Geneva, 2010.

⁹³ Universal Declaration on the Eradication of Malnutrition and Hunger; Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Articles 12(2) and 14(2)(h); Convention on the Rights of Persons with Disabilities, Articles 25(f) and 28(1); Convention on the Rights of the Child (CRC), Articles 24(2)(c) and 27; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), Article 12; African Charter on the Rights and Welfare of the Child, Article 14(2)(c); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 15; Arab Charter, Articles 38 and 39(2)(e).

⁹⁴ The nature of customary international law of the dispositions of the ICESCR arose with regards to the right of food in Yemen. Half of Yemen's population is food insecure and over 20 million Yemenis do not have access to clean water daily. In the beginning of 2016, Saudi-led coalition blocked vessels in the Hodeida port and aircraft in Sana'a airport that were carrying essential goods (mainly food) from entering Yemen. This, however, is a breach of article 11 of the ICESCR, which has been recognized to be a customary international law. Despite the serious violation of customary international law, the opening of the Hodeida port was admitted after the Stockholm agreements in 2018 and the establishment of a UN peacekeeping operation in the city. On the other hand, the opening of the Sana'a airport was allowed only in June 2022. See: UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *Information received concerning the negative impact on the enjoyment of Human Rights and the apparent blockage on aircraft and vessels carrying essential goods from entering Yemen*, Geneva, 2016, UN Doc. SAU 6/2016.

them.⁹⁵ Yemen has also ratified the Convention on the Discrimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child and the Arab Charter on Human and People's Rights.

Yemen has also ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, accepting the complaint inquiry procedure of the Convention initiated by the UN Committee against torture. So, if the UN Committee against Torture receives reliable information of serious or systematic violations of the treaty by Yemen, it could undertake an inquiry. To date, this has not happened yet. The conduct starvation as a method of war crime should be considered as an inhuman or degrading treatment; therefore, Yemeni citizens could hypothetically be protected by the Convention against Torture.

In general, there are three different obligations imposed on State parties when they apply the human right to food, namely the right to respect, protect and fulfil⁹⁶. The violation of these three obligations can occur through either a direct action (i.e., intentional starvation and deprivation from food) or through the omission or failure of the State to take the necessary measures that derive from these obligations⁹⁷.

Considering the context of the Yemeni conflict, a doubt arises on whether these above-mentioned rights impose a legal obligation on non-State actors. This issue is out of the scope of this article, but it is worth mentioning that, although there is a lot of debate on this matter, non-State armed group may be also be held responsible for violations of human rights treaty where they exercise de facto control over territory and population⁹⁸; this might be the case for the Houthis in Northern Yemen.

⁹⁵ Nevertheless, even in the absence of the applicability of international human rights law to non-state armed groups, IHL and ICL remain applicable. In this case, as already seen, the prohibition of starvation is a complementary norm to the right to food in armed conflict; therefore, Saudi Arabia is bound by this obligation at an international level.

⁹⁶ MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warring Parties in Yemen*, cit. supra note 59.

⁹⁷ *Ibid.* See also the Committee on Economic, Social and Cultural Rights in General Comment No. 12 which defined the obligations that States must fulfill in order to implement the right to adequate food at the national level.

⁹⁸ For further information on the topic, see: M. DARAGH, *Non-State Armed groups and Peace Agreements: Examining Legal Capacity and the Emergence of Customary Rules*, in M. WELLER, M. RETTER, A. VARGA, *International Law and Peace Settlements*, Cambridge, 2021, p. 187 ff.; A. BERKES, *The Human Rights Obligations of non-State Actors*, in A. BERKES *International Human Rights Law Beyond State Territorial Control*, Cambridge, 2021, p. 149 ff.

3. The situation on starvation in Yemen

Unlike other neighboring countries and other places around the world, the famine and starvation in Yemen is not caused by climate phenomena or a particularly unfriendly environment. Despite slowly becoming a territory in which climate change⁹⁹ is producing its effects, Yemen is still the *Arabia Felix*, the green and fertile land that the Romans would talk about¹⁰⁰. Nevertheless, the potential of the Yemeni territory and its resources are completely being mismanaged to the point that today 17.3 million Yemenis are food insecure¹⁰¹ out of a population of 33 million people. The rate of malnutrition is one of the highest in the world and almost one third of families have gaps in their diet¹⁰².

Starvation in Yemen is not a recent livelihood issue for the country; before the conflict almost 45% of the population was already food insecure¹⁰³. This was due to a series of factors, mainly related to the political and economic crisis and instability Yemen has been facing since its independence in the 1960s. The ongoing war has simply been the *coup de grace* for Yemeni civilians. In fact, the conflicting parties, aware of the already fragile condition of the population¹⁰⁴, might have taken advantage of it¹⁰⁵. During the conflict, starvation has systematically been used as a method of warfare by all warring parties. In September 2021, Mwatana for Human Rights¹⁰⁶, one of the very few Yemeni NGOs which are still operating in the Houthi-controlled areas of the country, published an

⁹⁹ For further information on the effects of climate change in Yemen, see: R.A. PRINCE, *Climate Change Risks and Opportunities in Yemen (K4D Helpdesk Report)*, in *Institute of Development Studies*, 2022, available at: < https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/17584/1168_Climate%20change%20risks%20and%20opportunities%20in%20Yemen.pdf?sequence=1&isAllowed=y >. See also the Stockholm International Peace Research Institute's Fact Sheet on Climate Change and Security in Yemen (June 2023): < https://www.sipri.org/sites/default/files/2023-06/2023_sipri-nupi_fact_sheet_yemen_june.pdf >.

¹⁰⁰ J. RETSÖ, *When Did Yemen Become "Arabia Felix"?*, in *Proceedings of the Seminar for Arabian Studies*, 2003, Vol. 33, *Papers from at the thirty-sixth meeting of the Seminar for Arabian Studies held in London, 18-20 July 2002*, 2003, p. 229 ff.

¹⁰¹ WFP estimates, available at: < <https://www.wfp.org/emergencies/yemen-emergency> >/

¹⁰² *Ibid.*

¹⁰³ WFP, *Comprehensive Food Security Survey*, Rome and Sana'a, 2012.

¹⁰⁴ For further information, see WFP estimates, available at: < <https://www.wfp.org/emergencies/yemen-emergency> >.

¹⁰⁵ See *supra* note 2.

¹⁰⁶ See Mwatana For Human Rights' Website available at: < <https://www.mwatana.org/en/home> >.

extensive report¹⁰⁷ on the use of starvation by the Saudi-led coalition and by the Ansar Allah group. This paper, which gathered the efforts of many civil society and community-based organizations¹⁰⁸, provided a meticulous description of how the two opposing parties have taken advantage of the fragility of civilians with regards to food insecurity in the territories of their concern. Naturally, in situations where civilians become the victims of abuses and attacks, it is the most vulnerable categories of the population, such as women¹⁰⁹ and children, who bear the brunt of these assaults. While the goal of utilizing starvation as a method of warfare was the same for the Saudi-led coalition and the Houthis¹¹⁰, the approaches employed to deprive civilians have varied depending on the capabilities and available resources of the parties carrying out this abuse of human dignity. On the one hand, it has been extensively proven that the Saudi-led coalition had carried out airstrikes and military attacks on civilian agricultural infrastructures and water facilities¹¹¹ with the specific purpose of denying civilians the access to food and water in order to achieve their goals in the area and harm the Houthis. In 2018, anthropologist professor Martha Mundy reported an off-record reply of a Saudi diplomat to a question about threatened starvation: “once we control them, we will feed them¹¹²”: this statement denoted how much civilians didn’t have any relevance when it came to achieving political agendas for the war. Moreover, the *de facto* naval, land and aerial blockade imposed by the Saudi-led coalition since 2016 on Yemen has severely restricted the flow of food to civilians and fundamental humanitarian assistance on which today 70% of the Yemeni population relies to survive¹¹³.

¹⁰⁷ MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warring Parties in Yemen*, cit. supra note 59.

¹⁰⁸ See supra note 2.

¹⁰⁹ PEACE TRACK INITIATIVE AND WOMEN’S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, *Joint Submission to UN Committee on the Elimination of Discrimination Against Women*, 2021.

¹¹⁰ M. HUSAIN, *Starvation as a Method of Warfare*, in *Research Society of International Law (rsilpak.org)*, 2021.

¹¹¹ MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warring Parties in Yemen*, cit. supra note 59.

¹¹² M. MUNDY, *The Strategies of the Coalition in the Yemen War: aerial bombardment and food war*, in *wordpeacefoundation.org*, 2018, available at: < <https://sites.tufts.edu/wpf/files/2018/10/Strategies-of-Coalition-in-Yemen-War-Final-20181005-1.pdf> >.

¹¹³ UNOCHA resources, available at: < <https://www.unocha.org/yemen> >.

With regards in particular to the naval blockade, the prohibition of starvation as a method of warfare does not prohibit *per se* the imposition of the naval blockade itself, as long as the purpose is to achieve a military objective and not to starve the civilian population. This principle is present in the San Remo Manual on International Law Applicable to Armed Conflict at Sea¹¹⁴. However, the 2016 blockade's biggest consequence has been the starvation, more than the weakening of the Houthi groups. To comprehend the gravity of the blockade, the World Organization Against Torture has defined it as a 'torture in slow motion'¹¹⁵.

On the other hand, the Houthis have put restrictions on humanitarian access, in blatant violation of Article 18 APII, relating to relief societies and relief actions, which is legally binding for the Ansar Allah group. Concurrently, there is documentation and proof of the use of landmines to purposely impede the access to agricultural areas and objects indispensable for the survival¹¹⁶.

In addition, both parties have similarly resorted to the deliberate and disproportionate destruction of OIS, which is one of the primary causes of starvation and related diseases in Yemen¹¹⁷. Numerous reports from organizations and entities like the World Peace Foundation¹¹⁸, Global Legal Action Network¹¹⁹, Yemen Data project¹²⁰, the UN Group of Eminent Experts on Yemen¹²¹ and the Yemeni Ministry of Agriculture and Irrigation¹²² have demonstrated both parties' responsibility for the

¹¹⁴ The San Remo Manual on International Law Applicable to Armed Conflict at Sea is a document that provides a comprehensive overview of the rules and principles of IHL as they apply to naval warfare and conflicts at sea. The manual was prepared by a group of legal and naval experts at the International Institute of Humanitarian Law in San Remo, Italy. The San Remo Manual is a respected and influential document, but it is not a legally binding treaty itself. See: L. DOSWALD-BECK (ed.), *San Remo Manual on International Law Applicable to Armed Conflict at Sea*, Cambridge, 1995.

¹¹⁵ WORLD ORGANIZATION AGAINST TORTURE, *Torture in Slow Motion – The Economic Blockade on Yemen and Its Grave Humanitarian Consequences*, Brussels and Tunis, 2022.

¹¹⁶ GROUP OF EMINENT INTERNATIONAL AND REGIONAL EXPERTS ON YEMEN, *Situation of Human Rights in Yemen, including violations and abuses since September 2014*, 13 September 2021, A/HRC/48/20.

¹¹⁷ L. GRAHAM, *Pathways to Accountability for Starvation Crimes in Yemen*, in *Case Western Reserve Journal of International Law*, 2021, p. 401 ff.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ GROUP OF EMINENT INTERNATIONAL AND REGIONAL EXPERTS ON YEMEN, *Situation of Human Rights in Yemen, including violations and abuses since September 2014*, *cit. supra* note 116.

¹²² See Yemeni Ministry of Agriculture and Irrigation's Website, available at: < <https://www.agriculture.gov.ye/?lng=english> >.

destruction of OIS in the country. Apart from the clear moral condemnation and rejection of these actions, they are also in violation of Article 14 APII and 54 API¹²³.

In essence, “*Yemen is not starving; Yemen is being starved*”¹²⁴. While problems related to food production or distribution are significant factors, mass starvation in Yemen is related to all these actions that intentionally harm a population’s ability to survive¹²⁵. Of course, as previously discussed, many of these operations are prohibited under international law. Nevertheless, they still take place in Yemen, in spite of the diminishing intensity of armed conflicts and the prospect of peace agreements in the near future. And what is even more frustrating, is that it is all happening in front of a less and less engaged international community, which is aiming at ending conflict without properly acknowledging the well-being of the civilian population¹²⁶.

Another issue pertaining to starvation is the diminishment of humanitarian aid. The 2023 Humanitarian Response Plan¹²⁷ for Yemen required \$ 4.34 billion to secure food and OIS to 17 million food insecure Yemenis in the country. However, following a trend that has been going on for more than two years, funding from donors has diminished in Yemen. The largest emergency response in Yemen is the one of the World Food Program (“WFP”), which aims to provide food aid to approximately 15 million people¹²⁸. However, in August 2023, the WFP has suspended its emergency program’s projected plan, having secured roughly 28 percent of the necessary funds¹²⁹ (about \$ 1.05

¹²³ A. CLAPHAM, P. GAETA, M. SASSÒLI, *The 1949 Geneva Conventions – A Commentary*, *cit. supra* note 72.

¹²⁴ S. PERLO-FREEMAN, *Yemen is not starving, Yemen is being starved*, in *newint.org*, 9 March 2021, available at: < <https://newint.org/features/2021/03/09/yemen-not-starving-yemen-being-starved> >; ; M. ABDULKADER, *The Forgotten War*, *cit. supra* note 1.

¹²⁵ M. ABDULKADER, *The Forgotten War*, *cit. supra* note 1.

¹²⁶ While acknowledging that the rapprochement between the Houthis and the Saudis can be the “real deal” in ending the war for good, the risk is that recent talks and roundtables that have happened in the last year will end in Saudi forces pulling out handing over the country to the Houthis who will be left fighting and eventually divide from the STC, causing further abuses of human rights. In a recent interview, Abubakr Al-Shamahi, Middle East and North Africa Editor with al Jazeera Digital and former researcher at the San’a Center for Strategic Studies, stated: “*For lots of Yemenis, the idea of the Houthis ruling over them is akin to the Taliban ruling over Afghanistan for many Afghans. It’s just something that they do not want*”. Full interview here, available at: < <https://www.aljazeera.com/program/start-here/2023/5/11/is-the-war-in-yemen-about-to-end-start-here> >.

¹²⁷ < <https://reliefweb.int/report/yemen/yemen-humanitarian-response-plan-2023-january-2023-enar> >.

¹²⁸ See WFP’s page on Yemen: < <https://www.wfp.org/emergencies/yemen-emergency> >.

¹²⁹ EMIRATES POLICY CENTER, *Yemen’s Declining Aid Funding: Choices for the Global Community*, in *epc.ae*, 4 September 2023, available at: < <https://epc.ae/en/details/featured/yemen-s-declining-aid-funding-choices-for-the-global> >.

billion). The declining funding did not affect only the WFP and other UN agencies which operate in Yemen, but it affected all other humanitarian players on the ground¹³⁰. For the first time in eleven years, the International Committee of the Red Cross (ICRC) faced funding shortages in Yemen's operations: in a statement, the general director of ICRC stated that "this is a worrying development which, if not reversed, will undermine the progress of neutral and impartial humanitarian action¹³¹".

Donors' funding in the humanitarian assistance world has decreased for everyone. Despite that, there are a series of more specific factors that led to the decrease of humanitarian pledging in Yemen. The first factor revolves around the global crises and conflicts that are casting the Yemeni conflict and food crisis in the shadow. Foremost among the conflicts is the war in Ukraine, which erupted in February 2022 and added millions of individuals to the target population that the UN Assistance Program serves¹³². The Russian-Ukrainian war not only caused further competition between humanitarian organizations to obtain the necessary money for the implementation of their projects, but it also gathered a lot of Western media attention¹³³ which unfortunately placed other conflicts around the world in the background. The Russian-Ukrainian war has further exacerbated the food insecurity crisis in Yemen, as an estimated 46% of the wheat was imported from Russia and Ukraine¹³⁴.

[community#:~:text=Reducing%20humanitarian%20funding%20has%20been,58%20percent%20in%20its%20funding.>.](#)

¹³⁰ The Norwegian Refugee Council admitted the Yemen activities are being implemented from the remaining funding the NGO has received in the past; similarly, INTERSOS and other NGOs working in the country stated that Yemen pledging fall far short of what is needed to help Yemenis survive, available at: < <https://www.intersos.org/en/yemen-pledging-falls-far-short-of-what-is-needed-to-help-yemeni-people-survive/> >.

¹³¹ Available at: < <https://www.wfp.org/emergencies/yemen-emergency> >.

¹³² EMIRATES POLICY CENTER, *Yemen's Declining Aid Funding: Choices for the Global Community*, cit. supra note 129.

¹³³ J. S. BACHMAN, E. BRITO RUIZ, *The Geopolitics of Human Suffering: A Comparative Study of Media Coverage of the Conflicts in Yemen and Ukraine*, cit. supra note 1.

¹³⁴ F. BAHASHWAN, *The Impact of the Russian-Ukrainian War on Yemen*, in *wilsoncenter.org*, 2022.

The second important factor is the sequential crises that are emerging at a global level¹³⁵: ranging from the COVID-19 pandemic to the so-called migrant “crisis” that Europe is experiencing, Yemen has deeply suffered as it lost its priority status among international donors¹³⁶.

A third factor which indirectly affected Yemen’s situation concerns the growing challenges of the humanitarian aid system. For instance, donors are decreasing their funding because of cases of lacking transparency¹³⁷ of the budget of humanitarian organizations. There is also a growing sense of disillusionment among donors who keep funding continuing humanitarian crises that last decades without significant traces of improvement¹³⁸.

Finally, Yemen has sadly experienced targeting of humanitarian operators in the country. In addition to the impediment of humanitarian aid and actions in the country by the conflicting parties, humanitarian workers and infrastructures have been victims of targeted attacks¹³⁹. Most recently, in July 2023, WFP staff member Moayad Hameidi was shot and killed in Taizz governorate, complicating the already delicate position of WFP in Yemen.

4. The issues relating to the application of the international legal framework and alternative avenues and recommendations to prevent and combat starvation

After giving a general overview of the international laws on the prohibition of mass starvation and after giving a brief analysis on the situation on the ground, it clearly appears that there is a huge implementation and accountability gap for the laws and norms that should protect Yemeni citizens.

¹³⁵ N. PEUTZ, D. FASSIN, M. FOURCADE (Eds.), *Crisis as a pre-existing condition: Yemen between Cholera, Coronavirus and Starvation*, in *Pandemic Exposures: Economy and Society in the Time of Coronavirus*, Chicago, 2021, pp. 295 ff.

¹³⁶ For example, in 2023, the United Kingdom has reallocated a fourth of its aid budget to accommodate incoming migrants and asylum seekers at its borders. EMIRATES POLICY CENTER, *Yemen’s Declining Aid Funding: Choices for the Global Community*, *cit. supra* note 129.

¹³⁷ E. M. GABER, M. FENTTIMAN, *From Food to Cash Assistance: Rethinking Humanitarian Aid in Yemen*, in *International Journal of Humanitarian Action*, 2022, p. 1 ss.

¹³⁸ *Ibid.*

¹³⁹ J. SOWERS, E. WEINTHAL, *Humanitarian Challenges and Targeting of Civilian Infrastructure in the Yemeni War*, in *International Affairs*, 2021, p. 157 ff.

There are many ways in which national and international stakeholders could advocate to fill this gap and obtain effective justice for the Yemeni population; writing entire books would probably not be enough to give a fully comprehensive examination of these possibilities. In the context of the Yemeni armed conflict, there has been, in particular, a lot of debate among academics¹⁴⁰ and researchers with regards to the determination and identification of the perpetrators of the starvation of the population to invoke States' (and ideally non-State actors) responsibility and/or accountability for the violation of international obligations on the one hand, and individual criminal responsibility for the violation of International Criminal Law on the other hand.

This process should ideally take place at an international level, considering that the Yemeni tribunals and institutions are unable and/or unwilling to effectively and efficiently prosecute the violation of the prohibition of mass starvation as a method of warfare. In 2020, Mwatana for Human Rights stated that “courts in Yemen are at best ineffective against warring parties and, at worst, captured by those same parties¹⁴¹”. Other national courts, belonging to the Saudi-led coalition's States or to Iran, would probably be even less impactful in prosecuting mass starvation, as for all of these States there are significant concerns¹⁴² by NGOs and international institutions when it comes to the implementation of IHL, ICL and IHRL.

In any case, at an international level significant issues arise.

First of all, invoking State responsibility in front of the only international court which can adopt binding decision, the International Court of Justice (“ICJ”), is very unlikely, as Yemen would never accept the jurisdiction of the court. The primary purpose of the ICJ is to address conflicts that may

¹⁴⁰ L. GRAHAM, *Pathways to Accountability for Starvation Crimes in Yemen*, *cit. supra* note 117.; A. VADAPALLI, *Justice Without Power: Yemen and the Global Legal System*, in *Michigan Law Review*, 2023, p. 811 ff; A. M. KIMBALL, A. JUMAAN, *Yemen: The Challenge of Delivering Aid in an Active Conflict Zone*, in *Global Security: Health, Science and Policy*, 2020, p. 65 ff.

¹⁴¹ MWATANA FOR HUMAN RIGHTS, *UN Human Rights Council: Prioritize Yemen Accountability and Redress*, Sana'a, 2020.

¹⁴² See: AMNESTY INTERNATIONAL, *Saudi Arabia 2022*, in *amnesty.org*, 2022, available at: < <https://www.amnesty.org/en/location/middle-east-and-north-africa/saudi-arabia/report-saudi-arabia/> >; UN HUMAN RIGHTS COUNCIL, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, UN Doc. /HRC/29/26/Add.2, 5 May 2015, paras. 33 and 48-62; S. MOINIPOUR, *The Islamic Republic of Iran's Export of Human Rights Violations through Proxies: Yemen and the Case of the Bahá'ís. Religion & Human Rights*, in *Religion and Human Rights – An International Journal*, 2022, p. 65 ff.

arise between countries, rather than address State responsibility for IHL violation or individual criminal responsibility¹⁴³. The countries that could be involved in front of the ICJ for a dispute concerning Yemen would be Iran and the States of the Saudi-led coalition. However, it is important to mention that the ICJ has usually been reluctant to address politically contentious disputes,¹⁴⁴ which would be the case if Yemen, or any other country involved in the conflict, appeared in front of the Court.

Moreover, the ICJ jurisdiction over a case concerning States' action in Yemen is not easy to determine, since the Court has no compulsory jurisdiction, unless States have accepted the jurisdiction of the court for the given case or have recognized the Court's judgments' legally binding power through a compromissory clause¹⁴⁵. There is no evidence that Yemen or any other State involved in the conflict (i.e., Iran and the States of the Saudi-led coalition) are willing to accept the ICJ jurisdiction for any dispute concerning the Yemeni civil war¹⁴⁶.

Eventually, even if there is theoretically an ICJ judgment which is legally binding, the issue of enforcement would remain a significant concern¹⁴⁷. The only body that can enforce the ICJ's decision is the UN Security Council. However, the Council often reflects the political interests of the five permanent members¹⁴⁸, also in relation to the Yemeni war. As a consequence, so far, at least one of

¹⁴³ A. VADAPALLI, *Justice Without Power: Yemen and the Global Legal System*, *cit. supra* note 140.

¹⁴⁴ *Ibid.* See also: P. H.F. BEKKER C. J. BORGEM, *World Court Rejects Yugoslav Requests to Enjoin Ten NATO Members from Bombing Yugoslavia*, in *American Society of International Law*, 1999, available at: < <https://www.asil.org/insights/volume/4/issue/4/world-court-rejects-yugoslav-requests-enjoin-ten-nato-members-bombing> >.

¹⁴⁵ See Article 36 of the Statute of the ICJ. The compromissory clause, also known as the "optional clause" refers to the situation in which States accept the jurisdiction of the ICJ as a means of resolving disputes. By including the compromissory clause in their declarations or agreements, States accept the ICJ jurisdiction and agree to abide by its decision in cases brought before the court.

¹⁴⁶ T. TZIMAS, *Legal Evaluation of the Saudi-Led Intervention in Yemen: Consensual Intervention in Cases of Contested Authority and Fragmented States*, in *Heidelberg Journal of International Law*, 2018, p. 147 ff.

¹⁴⁷ W. A. QURESHI, *The Crisis in Yemen: Armed Conflict and International Law*, in *North Carolina Journal of International Law*, 2020, p. 227 ff.; A. VADAPALLI, *Justice Without Power: Yemen and the Global Legal System*, *cit. supra* note 140.

¹⁴⁸ J. TRAHAN, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*, Cambridge, 2020.

the permanent members has always impeded any legally binding Resolution concerning Yemen¹⁴⁹ through the adoption of the veto power¹⁵⁰.

Secondly, Yemen has not accepted the individual complaints procedures of any international human rights treaty monitoring bodies, except for the one of the Convention on the Rights of People with Disabilities. Similarly, Yemen has implicitly accepted¹⁵¹ the inquiry procedure only for the Convention against Torture and the Convention on the Rights of People with Disabilities. In any case, the decisions of treaty monitoring bodies are not *per se* legally binding; therefore, enforcement gaps are likely to happen.

Thirdly, when dealing with the enforcement procedures¹⁵² of IHL, some weaknesses and deficiencies emerge. IHL is indeed grounded in a principle of reciprocity between armed actors, but there isn't an effective monitoring body that can guarantee the respect of the rules: this poses a grave challenge to guaranteeing human rights in conflict. There are mainly three enforcement procedures that attend IHL, according to the Geneva Conventions and the Additional Protocols: 'protecting powers'¹⁵³, 'international fact-finding commissions'¹⁵⁴ and prosecutions¹⁵⁵. These procedures, however, necessitate a strong political will and a readiness from all the parties of the conflict to dialogue between them. This is for sure a limitation to an effective mechanism that could determine and prosecute violations IHL¹⁵⁶.

¹⁴⁹ See, for example, Russia's veto in 2018 on draft Resolution which would have applied sanctions on Yemen for the violations of IHL and IHRL. UN Security Council 8190th meeting, *The Situation in the Middle East*, 26 February 2018, New York S/PV.8190, available at: < https://documents-dds-ny.un.org/doc/UNDOC/GEN/N_18/051/93/PDF/N1805193.pdf?OpenElement >.

¹⁵⁰ See Article 27 of the UN Charter.

¹⁵¹ Merely by ratifying the convention.

¹⁵² C. O'ROURKE, *Women's Rights in Armed Conflict Under International Law*, cit. supra note 48, p. 85.

¹⁵³ Art. 8 of GC I: "*The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict [...]*".

¹⁵⁴ Art. 90 of Additional Protocol to GC: "*An International Fact-Finding Commission consisting of fifteen members of high moral standing and acknowledged impartiality shall be established [...]*."

The Commission shall be competent to: (i) enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol; (ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol.

In other situations, the Commission shall institute an enquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned".

¹⁵⁵ C. O'ROURKE, *Women's Rights in Armed Conflict Under International Law*, cit. supra note 48, p. 85.

¹⁵⁶ A. CASSESE, *Current Challenges in International Humanitarian Law*, in A. CLAPHAM, P. GAETA (ed.), *The Oxford handbook of Law in Armed Conflict*, Oxford and New York, 2014, p. 3 ss.

Finally, with regards to ICL, Yemen is not party to the Rome Statute; so, as stated above, unless there is a direct referral by the UN Security Council¹⁵⁷ to the ICC or unless Yemen or other States involved make a declaration under Article 12(3) of the Rome Statute accepting the jurisdiction of the ICC, the Rome Statute cannot be implemented in the context of the Yemeni armed conflict. Considering that the ICC does not have jurisdiction on international crimes committed in Yemen, a solution could be universal jurisdiction. Universal jurisdiction is a legal concept that allows States or international organizations to claim criminal jurisdiction for international crimes committed by any person regardless of his or her nationality, place of commission or any other link to the prosecuting entity. The principle of jurisdiction is a “reserve tool”, meaning that it is conditioned by the existence of the subsidiarity principle which requires that the universal jurisdiction can be practiced only if the judicial system in the home-country to the crimes “is unable or unwilling to investigate and prosecute”. This certainly is in line with the situation of Yemen¹⁵⁸.

The resort to the universal jurisdiction has been proposed various times by the UN Group of Eminent Regional and International Experts on Yemen in their various reports. For example, in 2019, the experts stated:

“States, individually and collectively, must take effective measures to put an end to international law violations in Yemen and ensure the accountability of perpetrators. The UN Security Council should call on the parties to the conflict to lift all blockades and sieges against the civilian population and refer the situation in Yemen to the International Criminal Court. While the internationally recognized government of Yemen and the States belonging to the Saudi Arabia-led coalition have a primary duty to investigate and prosecute alleged perpetrators of crimes under international law committed in Yemen, third States should consider exercising universal

¹⁵⁷ This is highly unlikely given that permanent members of the UN Security Council have assisted the Saudi-led coalition either by selling weapons or giving to them logistical support, which have contributed to the mass starvation of the Yemeni population. See: YEMEN ACCOUNTABILITY PROJECT, *Aiding and Abetting: Holding States, Corporations and Individuals Responsible for War Crimes in Yemen*, 2020, available at: < <https://case.edu/law/sites/case.edu.law/files/2020-10/FINAL%20YAP%20AIDING%20ABETTING%20WHITE%20PAPER%20%20%282%29.pdf> >.

¹⁵⁸ A. VADAPALLI, *Justice Without Power: Yemen and the Global Legal System*, *cit. supra* note 140.

jurisdiction and prosecuting alleged perpetrators that are present on their territory or otherwise under their jurisdiction¹⁵⁹”.

In any case, when focusing on legal aspects and studying the international protection of civilians against starving as a method of warfare from international law’s perspective, politics and international relations are extremely relevant and can impact on the application of law¹⁶⁰. It is true that in the last decades international law has contributed to the protection of civilians in the context armed conflicts; however, there are evident issues and inadequacies, which are often correlated to the political unwillingness to address specific issues. Any law is as strong as the political will to implement it. Especially in contexts of armed conflict, political interests of States or of non-State armed groups dominate the scene and need to be taken in account. For example, when it comes to universal jurisdiction, this can lead to critical decisions which are expected to reflect a State’s position regarding another State¹⁶¹. There is a great possibility that this legal tool is politically motivated. Therefore, the politicization of universal jurisdiction can function as an impetus or impediment to justice.

So, given this situation, does that mean that there is little to no possibility for Yemen to effectively obtain justice? The answer is not easy. Nevertheless, hope and efforts to end starvation for the Yemeni people should continue. Considering that the national or international legal pathway¹⁶² and the possibility of transitional justice¹⁶³ in Yemen are not concretely feasible at the moment, research, advocacy and the improvement of humanitarian efforts can and should be key elements in combating and ending famine in the country.

¹⁵⁹ HUMAN RIGHTS COUNCIL, *Report of the detailed findings of the Group of Eminent International and Regional experts on Yemen*, Geneva, forty-second session 9–27 September 2019, UN Doc. A/HRC/42/CRP.1.

¹⁶⁰ A. COJOCARU, *Legal Impediments to the Prosecution of War Crimes in Internationalized Armed Conflicts: The Case of Yemen*, Oslo, 2019.

¹⁶¹ B. BROOMHALL, *Universal Jurisdiction: Myths, Realities, and Prospects: Towards the Development of an Effective System of Universal Jurisdiction for Crimes under International Law*, in *New England Law Review*, 1993, p. 399 ss.

¹⁶² After the adoption of the UNSC Resolution 2417 which condemned the use of starvation as a method of warfare, some argued that an *ad hoc* tribunal could be put in place to prosecute this war crime. For example, see: A. VADAPALLI, *Justice Without Power: Yemen and the Global Legal System*, *cit. supra* note 140.

¹⁶³ Civil society organizations, activists and researches have been calling for a transitional justice system in Yemen, since long before the conflict, but they have always been ignored. However, see S. PHILBRIK YADAV, *Yemen in the Shadow of Transition: Pursuing Justice Amid War*, Oxford, 2023.

4.1. *Research, Documentation and Advocacy*

The importance of conducting research and documenting the mass starvation in Yemen, which remains a largely unspoken crisis, cannot be overstated. In a world where countless crises compete for attention, the silent suffering of millions in Yemen cannot be ignored. Research and documentation, inside and outside the country, serve as the eyes and ears of the global community. Not only there would be a benefit from the point of media attention that Yemen could get, but research is often linked to advocacy and policy influencing/making and is the constituent element of informed decision-making. The more engagement with the issue of starvation in Yemen there is, the more original and innovative solutions to contrast starvation can be put forward by stakeholders and practitioners. Research and documentations are also powerful tools for accountability; when, in due course, judicial and extra-judicial mechanisms will be set up to invoke individuals and other actors' responsibility for the crime of starvation as a weapon of warfare. The research carried out until then will be used as evidence to hopefully bring justice to the victims.

At the UN level, the revival of the mandate of the Group of Eminent Experts, which was terminated in October 2021¹⁶⁴, after the UN Human Rights Council voted, would re-establish a mechanism to monitor the human rights situation in Yemen and ensure accountability for abuses. At the moment, there are no alternative mechanisms, further creating a justice gap for the population.

Attention should be drawn to training and providing local actors with the essential tools to effectively document and research about this topic without putting themselves at risk. From the outside, humanitarian and human rights organizations should support the research of people who are living in the country, by providing, for example, useful technological and digital tools and skills. In fact, in Yemen only around 27 percent of the residents have access to internet and only one percent of the

¹⁶⁴ See Group of Eminent Experts on Yemen relating to the refusal of the Human Rights Council to renew their mandate, available at: < <https://www.ohchr.org/en/press-releases/2021/10/statement-group-experts-yemen-hrc-rejection-resolution-renew-their-mandate> >.

population has fast internet connection¹⁶⁵. In the age of social medias and information, internet is an essential mean to promote awareness in conflict-affected countries.

In a context like the Yemeni one, where the mere fact of spreading the voice of voiceless people outside the country can sometimes save lives (through a simple online donation, for example), research and documentation are not mere academic exercises: they are lifelines and beacons of hope.

4.2. *Improvement of Humanitarian Efforts*

Improvement of humanitarian efforts is a very extensive topic which is open to a wide range of interpretations. To simplify and condense the information, this article will consider only on three elements, namely the securement of additional funding, the need to adapt to changing situation and importance of enhancing local responses.

It is important to secure additional funding. This objective can be accomplished through various strategies. Stemming from research, the raise of global awareness about the severity of the Yemeni context can increase the involvement of donors, coming from both the public and private sector. Moreover, ensuring full transparency and maximum efficiency of the use of funding can alleviate food insecurity for many people.

At the same time, it is important that humanitarian intervention speedily adapts to the changing situations. Humanitarian interventions should, for example, carefully follow up the movement of internally displaced persons (“IDPs”) in the country and update their actions accordingly. In Yemen, in less than four years, the number of IDPs more than doubled¹⁶⁶. While the movement of IDPs was more frenetic in the past, since people were trying to escape from conflict and famine, the situation is slowly stabilizing as there are fewer active fights in the country¹⁶⁷. Nevertheless, humanitarian interventions should follow the movement of people to provide food and supplies to as more

¹⁶⁵ Available at: < <https://www.worlddata.info/asia/yemen/telecommunication.php#:~:text=Yemen%20is%20lagging%20behind%20in,than%20256%20kbit%2Fs> >.

¹⁶⁶ See Internal Displacement Monitoring Center Website, available at: < <https://www.internal-displacement.org/countries/yemen> >.

¹⁶⁷ See *supra* note 2.

beneficiaries as possible. Following the trends of IDPs would also be helpful in preventing other livelihood, health and protection concerns, such as the spread of infectious diseases among the population¹⁶⁸.

Adapting the humanitarian intervention to the ongoing situation also means to recognize that the Yemeni context is not experiencing an emergency humanitarian crisis which is temporary¹⁶⁹. Therefore, since the challenges will most likely continue in the short and medium-term future, plans for humanitarian intervention should be as flexible as possible to sudden changes.

Finally, one of the great challenges of humanitarian operations is the one of localization and the elevation of local responses¹⁷⁰. Including national organization in funding and coordination systems at a country level encourages a “whole-of-society” approach, which results in more efficient and punctual replies¹⁷¹. Eventually, international non-governmental organizations and other international institutions are not akin to remain for a long time in one specific country and might leave after the end of their projects. On the other hand, local organizations belong to Yemen, they have the same or similar cultural and religious sensitivity and they are closer to the population in need to whom they feel connected.

Local responses are also more impactful in training and facing some behaviors of the populations¹⁷². For example, local organizations better understand the rationale behind specific negative coping mechanisms that starving families put in place. And while an expat iNGO staff member may not have the capacity and cultural sensitivity to efficiently teach, for instance, to a family that taking children

¹⁶⁸ A. ALHADHERI S. ALAM S, AHMED, M. ALSABRI. *The Crisis, Disasters and Catastrophes Afflicting Yemen and its People*, in *Frontiers in Emergency Medicine*, 2023, available at: < <https://fem.tums.ac.ir/index.php/fem/article/view/1171/438> >.

¹⁶⁹ EMIRATES POLICY CENTER, *Yemen's Declining Aid Funding: Choices for the Global Community*, cit. supra note 129.

¹⁷⁰ L. FRENNESSON, J. KEMBRO, H. DE VRIES, M. JAHRE, L. VAN WASSENHOVE, *International Humanitarian Organizations' perspectives on localization efforts*, in *International Journal of Disaster Risk Reduction*, 2022, p. 1 ff.

¹⁷¹ See Global Compact on Refugees Website, available at: < <https://globalcompactrefugees.org/good-practices/social-cohesion-ensuring-protection-through-whole-society-approach> >.

¹⁷² L. FRENNESSON, J. KEMBRO, H. DE VRIES, M. JAHRE, L. VAN WASSENHOVE, *International Humanitarian Organizations' perspectives on localization efforts*, cit. supra note 170.

away from school so that they work and buy food is counter-productive¹⁷³, a local activist is more likely to reach the same family and connect with the members better.

5. Conclusion

In Yemen, a nation gripped by the tumultuous intersection of regional, political, and ideological interests, the responsibility for the crime of starvation remains enigmatic. The Yemeni conflict serves as a testament to the intricacies of modern-day warfare, where the essence of humanity is tested amidst the chaos of conflict. This complex situation becomes increasingly challenging to untangle, as actors exercise varying degrees of control over a fractured land and sudden crises may arise and worsen food insecurity in the country. Yet, Yemen is experiencing a historical political moment. The country now stands at a crossroads: a future of peace agreements is conceivable, yet so is the possibility of a second chapter of conflict, where the actors involved may change, but the specter of famine and disruption is still there. In these crucial times, it's imperative that all efforts aimed at promoting peace prioritize the welfare of the millions of Yemenis who endure starvation. Yemen's journey towards peace shouldn't be a mere transition from conflict to a negative peace that sacrifices the well-being of its people and leaves future actors grappling with its consequences.

Instead, the focus must be on a positive peace, one that fosters a sustainable environment for the nation. There are many doubts and fears that the rapprochement between the conflicting parties will vanish in a few months; this is why, for the moment, great priority should also be given to strengthen humanitarian efforts to further protect civilians¹⁷⁴. However, while it is undeniable that the current political and legal framework concerning the prohibition of starvation in Yemen does not serve the best interests of its citizens, hope and unwavering dedication to the glorious *Arabia Felix* should always endure.

¹⁷³ See *supra* note 2

¹⁷⁴ See *supra* note 2.

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