

**Food Access and Conflict: Responsibility and Future Prosecution  
Guidelines for the Continued Humanitarian Violations of the Yemeni  
People**

by

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I dedicate this to those who do not know the warmth of full stomach. I also dedicate this to my husband and children in the hope they pursue their interests looking through a global lens, act locally to create an peaceful atmosphere around them, and defend others rights to live the same, for they have never known hunger.

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## ABSTRACT

Food used as a weapon of war literature focuses on how the state uses this form of “weapon” in order to weaken the opposition, for instance using siege warfare. Although sieges are costly and time-consuming, they may under certain circumstances be easier than engaging the enemy directly in open battle or going house to house to rout out the adversary. Subsequently, during war, international aid response may be hindered due to issues related to and /or the lack of humanitarian pauses. The World Food Program reported that while Yemen is not yet in a full-blown famine, yet 17 million Yemenis are in “emergency” food situations due to the civil war. This study proposes that the Saudi led Gulf Cooperation Council (which includes: Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Sudan, and United Arab Emirates) and the Houthi rebels, through blockades, sieges, and airstrikes, are contributing to the starvation and acute malnutrition of the civilians in Yemen. Both sides are not pursuing a meaningful resolution to end this civil war or to at least allow humanitarian pauses, and their lack of care in conducting these military actions falls under war crimes. All parties involved are ignoring the evidence, continuing fighting, and prolonging the suffering of the Yemeni people. This study finds the Saudi-led coalition, the Yemeni government, and the Houthis are committing war crimes against the Yemeni population, by indiscriminate attacks, and starvation. There is evidence of increased child undernourishment and malnutrition, increased food insecurity, increased need for humanitarian food assistance, increased indiscriminate attacks on markets, ports, and other transportations hubs, and increased food prices, all of which will be explored in this paper.

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## CHAPTER I: INTRODUCTION

“Death by famine lacks drama. Bloody death, the deaths of many by slaughter as in riots or bombing is in itself blood-bestirring; it excites you, prints indelible images on the mind. But death by famine, a vast slow dispirited noiseless apathy, offers none of that. Horrid though it may be to say, multitudinous death from this cause...regarded without emotion as a spectacle, is until the crows get at it, the rats and kites and dogs and vultures very dull”<sup>1</sup>

Conflict causes many things. Outward destruction, physical trauma, internal ordeals, and lack of hope. When the lack of food is added to the equation, a figurative “food war” - a concept which includes the use of hunger as a weapon in active conflict and the food insecurity that accompanies and follows as a consequence—doubles the stake for physical and mental devastation. Currently, close to 24 million people in 28 developing countries, transition countries, and territories are hungry and in need of humanitarian assistance. Yet, a death from lack of food (starvation), or persistent malnutrition, is a quiet, low-profile death, and easily forgotten. There were millions of people who starved to death during the Second World War, yet they are largely forgotten today.<sup>2</sup> Many people experiencing conflict induced hunger today are among the worlds’ 35 million refugees and internally displaced persons; others remain trapped in conflict zones. Fighters frequently use hunger as a weapon: they use siege to cut off food supplies and productive capabilities, starve opposing populations into submission, and hijack food aid intended for civilians. They may intentionally or recklessly destroy crops, livestock, land, and water. Planned asset-stripping of households in conflict zones threatens a

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<sup>1</sup> Stephens, Ian, *Monsoon Morning* (Ernest Benn, London, 1966)

<sup>2</sup> De Waal, Alex. (2018). *Mass Starvation. The History and Future of Famine*. Cambridge: Polity, 1.

household's loss of livelihood as the ongoing conflict leads to interruptions or a breakdown in production, trade, and the social fabric. The disruption of markets, schools, and infrastructure removes additional resources required for food production, distribution, safety, and household livelihoods.<sup>3</sup>

A majority of developing countries' workforce earns its livelihood from agriculture. War-induced reductions in food production mean income losses and reduced access to food for a large portion of the population, with a heavy impact on the poorest households. Displaced and refugee populations in crowded and unhygienic camps prove particularly vulnerable to nutritional deprivation, health problems, and violence. Although civilian women and their dependent children account for 70% to 80% of refugees and internally displaced people, men with guns out-compete them for food and sometimes force women to trade sex for rations.<sup>4</sup> Children also suffer disproportionately in war. Not only are violent conflicts and child malnutrition closely correlated, but conflict subjects children to physical disabilities, psychological trauma, homelessness, and separation from community ties during significant periods in their development. A global example is that after prolonged disruption of schooling, young adults in many African countries that have been at war most of their lifetimes find themselves unqualified for farming or any other vocation except fighting, and anchored in no community other than the one of comrades-in-arms. In addition to decreasing the opportunities for young people to attain skills that can contribute to elevated and more diversified livelihoods, conflict disrupts the

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<sup>3</sup> Messer, Ellen, Cohen, Marc, and Marchione, Thomas 'Conflict: A Cause and Effect of Hunger', *Environmental Change and Security Project Report*, 7, 2001, 1

<sup>4</sup> Sayagues, Mercedes. (1992, January-February). "The Invisibility of Refugee Women." *World Food Programme Journal* 19, 17-20

education of females—which has been identified as one of the best levers to improve the nutrition of all household members<sup>5</sup>.

Another tactic to hold civilians and opposing militaries at bay, is the emplacement of landmines. Landmines and unexploded ordnance (a) lower productivity of those injured, (b) reduce agricultural production by making farm land unsafe to cultivate, or by killing and injuring farmers, (c) curb market transactions because of impassable roads, (d) hinder the reintegration of displaced people, (e) inhibit land investment in mined areas, (f) cut off access to water and electricity, and (g) impede access of health care providers. For the estimated 250,000 to 300,000 worldwide survivors of landmine explosions, the costs for suitable medical treatment to return them to full functionality would amount to \$2 to 3 billion. Often, it is the most able-bodied members of society who fall victim to violent conflict and landmines.<sup>6</sup>

All of the examples above relate to how populations access food during war, how a government or rebel group can withhold or steal food meant for civilians, how actions during war destroy food, and how the economy surrounding food can deteriorate so no one can even afford food. In the case of the Yemeni civil War, all four examples are occurring simultaneously.

### **Yemen Civil War Background**

Yemen is among the world's Least Developed Country (LDC), with per capita Gross Domestic Product (GDP) Purchasing Power Parity (PPP) estimated at US \$2,800 in 2015, ranking 194 among 228 countries. Over half of the Yemeni population are poor, and have

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<sup>5</sup> Messer, Ellen & Uvin, Peter. (1996). *The Hunger Report: 1995*. Amsterdam: Gordon and Breach

<sup>6</sup> UNDP(1994). *Human Development Report 1994*. Oxford: Oxford University Press.

a low adult literacy rate, which is estimated at 70% overall, and 55% among women. This is combined with a high annual population growth of 2.47%.<sup>7</sup> Yemen imported more than 90% of its food, including the lion's share of its wheat and all its rice, to feed a population of about 25 million prior to the civil war in 2015.<sup>8</sup> The country's dependence on food imports is partly due to a weak agricultural sector that does not suffice to meet the demand of primary food commodities.<sup>9</sup> The second difficulty in agricultural development is the chronic water scarcity in the country. Its renewable sources are estimated to supply 2.1 billion cubic meters per year, while current annual extraction is estimated at 3.5 billion cubic meters.<sup>10</sup> This means that Yemen is depleting its water sources at a staggering and concerning rate and since many of the farmers base their agriculture on rain waters, which warming transitional weather is diminishing, and the fact that Yemenis use nearly 60% of their usable land to cultivate the amphetamine like khat crops, which it is estimated that 90% of men in Yemen chew regularly.<sup>11</sup>

Furthermore, the Yemeni Government is heavily dependent on oil revenues, which accounted for more than 77% of the total exports in 2013<sup>12</sup>. This heavy oil dependence has never translated into economic development and population enrichment, differentiating the country from all the other rent seeking states in the Arab Peninsula, mostly due to larger population and lower oil extraction. As Lackner wrote in her book,

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<sup>7</sup> CIA, The World Fact book, Yemen. [www.cia.gov](http://www.cia.gov)

<sup>8</sup> Dahan, Maha, Saul, Jonathan, and Wilkin, Sam. (2015). "Exclusive: Yemen Food Imports Disrupted Conflict Pressures Supply Chain." *Reuters*. 1 April.

<sup>9</sup> The Observatory of Economic Complexity, Yemen, [www.atlas.media.mit.edu](http://www.atlas.media.mit.edu)

<sup>10</sup> Lackner, *Why Yemen Matters: A Society in Transition*, 16

<sup>11</sup> Bulletin of the WHO, "Khat chewing in Yemen: turning over a new leaf," 86:2008. Number 10, October 2008, 737-816.

<sup>12</sup> The Observatory of Economic Complexity, Yemen, 2013 [www.atlas.media.mit.edu](http://www.atlas.media.mit.edu)

“Yemenis refuse to acknowledge the fundamental difference between sharing among approximately 25 million citizens the benefits of 9 million barrels of oil per day (Saudi Arabia) and those of 200,000 barrels per day (Yemen).”<sup>13</sup>

Prior to the Yemeni civil war, the relationship between Yemen and Saudi Arabia was not good. The first relations between the two states were settled by the Treaty of Taif in 1934, following a war between Saudi Arabia and Yemen. In 1962 there was a civil war between Royalists and Republicans. Saudi Arabia, Jordan, and Britain supported Mutawakkilite Royalists and interestingly, Egypt supplied nearly 70,000 troops to the Republicans. After Egypt’s defeat in the Six Day War against Israel, it withdrew its military support to the Republicans. The Republicans won though without the assistance and Saudi Arabia recognized the Yemen Arab Republic in 1970.<sup>14</sup> There was also a division in religion, which was the Sunni-Zeydi (Houthi Shias) conflict. However, Yemen was also divided into north and south in terms of ideology. The northern population of Yemen was close to the West and Saudi Arabia, while the southern population was close to the Soviet Union and Eastern Europe. The Houthi rebels, formally known as Ansar Allah, or "Partisans of God", follow Shiite Islam. The name originated from Hussein Badr al-Din al-Houthi, who led an uprising in 2004 aimed at winning greater autonomy for provinces and protecting the Houthis from the perceived encroachment of Sunni Islam. Houthi was killed in 2004 but his family and supporters led further rebellions and their influence continued to expand.<sup>15</sup> The Houthi insurgency

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<sup>13</sup> Lackner, Helen. *Why Yemen Matters: A Society in Transition*, 16.

<sup>14</sup> Zayed, Yago and Ben Smith. “Yemen at War” House of Commons Library CBP7184 (2016):no page. UK Parliament.

<sup>15</sup> <https://www.nbcnews.com/news/world/who-are-yemen-s-houthis-what-do-they-want-n665636>

heated up in 2009, briefly drawing in neighboring Saudi Arabia on the side of the Yemeni government, but quieted the following year after a ceasefire was signed.<sup>16</sup> During the early stages of the Yemeni Revolution in 2011, Houthi leader Abdul-Malik al-Houthi declared the group's support for demonstrations calling for the resignation of President Ali Abdullah Saleh.<sup>17</sup> President Saleh, who was in power from 1978-2012, had to resign in due to massive corruption, and the economic struggles happening in the country. Subsequently, in 2015 a UN panel of experts accused him of corruption, saying he may have amassed up to \$60 billion as the country descended into poverty during his 33 years in power.<sup>18</sup> The previous vice president under Saleh, Abdo Rabbo Mansour Hadi became the new president. The main aim was to settle a soft and peaceful transition process by the help of Hadi, and the Saudi led Gulf Cooperation Council (GCC), supported by the international community. However it did not accomplish its objectives. The conflict between the Houthis and the government was also seen as part of a regional power struggle between Shia-ruled Iran and Sunni-ruled Saudi Arabia. Gulf Arab states have accused Iran of backing the Houthis financially and militarily, though Iran has denied this, as they were themselves backers of President Hadi. The Washington Institute for Near East Policy said there were limits to Iran's ties with the Houthis. "Houthi relations with the Islamic republic resemble the Iran-Hamas relationship more than the Iran-Hezbollah relationship, that is, the Houthis are autonomous partners who usually act in

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<sup>16</sup> "Saudi-Houthi border fighting ends". *Al Jazeera*. 27 January 2010. Archived from the original on 12 April 2015. Retrieved 9 April 2015.

<sup>17</sup> "Yemen's president compares protests to 'influenza'". *CNN*. 21 February 2011. Archived from the original on 22 April 2015. Retrieved 9 April 2015.

<sup>18</sup> <http://www.jordantimes.com/news/region/yemen's-saleh-ex-president-who-clung-power> (accessed 20 September 2018).

accordance with their own interests, though often with smuggled Iranian arms and other indirect help,"<sup>19</sup> The Houthis left the GCC and the conflict continued with their invasion of presidential palace in San'a in 2014. Hadi and his prime minister fled to Riyadh. Then, the GCC decided to intervene in Yemen to cease the advance of the Houthis. In 2015, the Saudi-led coalition intervened in Yemen with the support of United States. Yemen is strategically important because it sits on the Bab al-Mandab strait, a narrow waterway linking the Red Sea with the Gulf of Aden, through which much of the world's oil shipments pass.<sup>20</sup>

Saudi Arabia received the support of United Nations, and resolution 2216 allowed them to intervene for the matter of Hadi's legitimacy and necessity of Houthis to withdraw from territory<sup>21</sup>. In Operation Decisive Storm, the Saudi-led coalition launched a five-week air-bombing in Yemen. Pro-government forces - made up of soldiers loyal to President Hadi and predominantly Sunni southern tribesmen and separatists - were successful in stopping the rebels taking Aden, but only after a violent, four-month battle. Coalition ground troops landed in Aden in August 2015 and helped drive the Houthis and their allies out of much of the south over the next few months. Then on 21 April 2015 they announced their success in stopping the Houthi advancement. But the civil war continued and subsequently, continued armed conflicts and violence caused terrorist groups such as Al Qaeda and ISIS to enter the territory and create chaos<sup>22</sup>. Jihadist

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<sup>19</sup> Ibid.

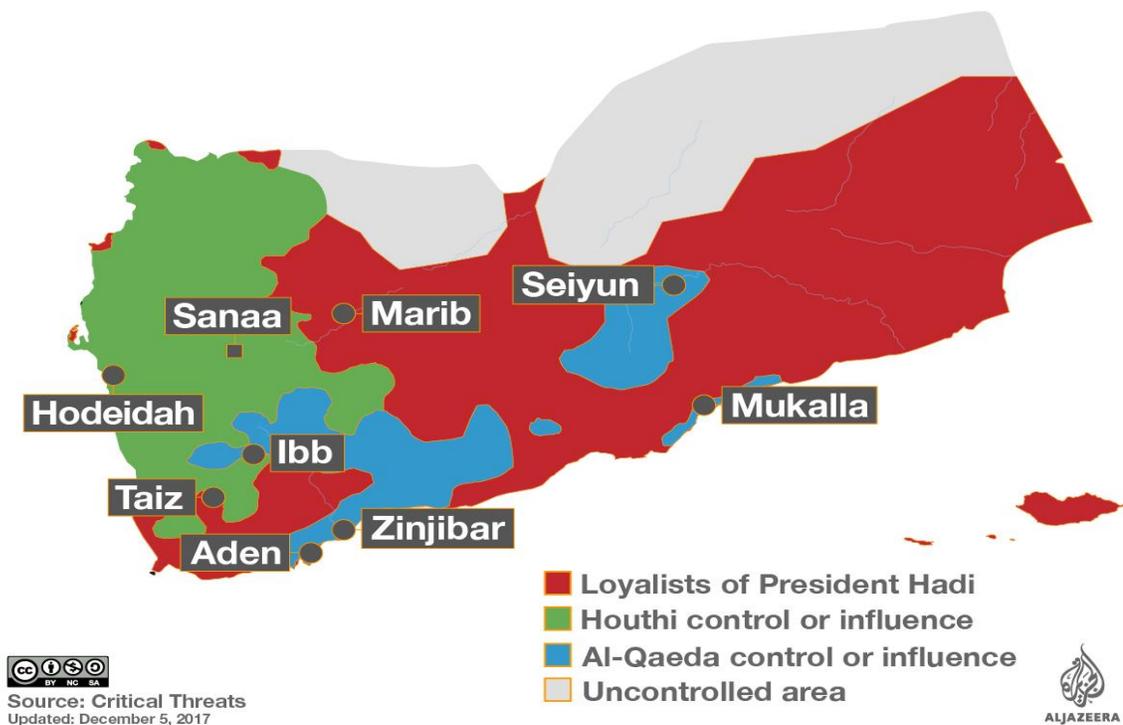
<sup>20</sup> Yemen crisis: Who is fighting whom?, <https://www.bbc.com/news/world-middle-east-29319423> (accessed 6 SEP 2018).

<sup>21</sup> Rugh, William A. "Problems in Yemen, Domestic and Foreign." *Middle East Policy* 22.4 (2015), 140-52.

<sup>22</sup> Edwards, Aaron. (2016). "Country Focus: Yemen." *Political Insight*. 1st ser. 7. 36-39. (accessed 5 September 2018).

militants from al-Qaeda in the Arabian Peninsula (AQAP) and rival affiliates of the Islamic State group (IS) have taken advantage of the turmoil by seizing territory in the south and carrying out deadly attacks, against coalition and Houthi forces alike, notably in Aden. Figure 1 shows the area of control by the separate actors in the Yemeni Civil War.

## Yemen: Who controls what



**Figure 1 Area of Control of Parties in the Yemeni Conflict**

Almost three years of fighting appears to have entrenched both sides, while three UN-organized efforts to negotiate a peace deal have failed. President Hadi's government established a temporary headquarters in Aden, although the president remains in exile. The Houthis meanwhile have not been removed from Sanaa, and have been able to

maintain a siege of the southern city of Taiz and fire mortars and missiles across the border into Saudi Arabia. The launch of a ballistic missile towards Riyadh in November 2017 prompted the Saudi-led coalition to tighten its blockade of Yemen. The coalition said it wanted to halt the smuggling of weapons to the rebels by Iran - an accusation Tehran denied - but the UN said the restrictions could trigger "the largest famine the world has seen for many decades". Although the coalition eased its restrictions on rebel-held ports after several weeks, the extended closures resulted in a sharp increase in prices of basic commodities, accelerating food insecurity and the collapse of already strained basic services. In short, the situation in Yemen, the UN said, is one of the world's worst man-made humanitarian disasters. Western intelligence agencies consider Al-Qa'ida in the Arabian Peninsula (AQAP), the most dangerous branch of al-Qaeda because of its technical expertise and global influence, and the emergence of Islamic State of Iraq and ash-Sham (ISIS) affiliates in Yemen is a serious concern. AQAP aims are to overthrow the Yemen Government and Houthi forces and, ultimately, establish an Islamic caliphate, and eradicate US and Western influence and presence in Yemen and the rest of the Arabian Peninsula. AQAP is most active in southern, eastern, and central Yemen. ISIS Yemen's aims are to replace the Yemen Government and Houthi forces with an Islamic state and implement ISIS's strict interpretation of sharia law. Its area of operation is mainly in south and central Yemen, where terrorists conduct attacks against Houthi forces, Shia Muslims, and government facilities and personnel.<sup>23</sup> What is clear is that AQAP and ISIS have a plan for their own control of Yemen and they are using the chaos

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<sup>23</sup>Yemen: <https://www.cia.gov/library/publications/the-world-factbook/geos/ym.html> (accessed 11 September 2018).

of the civil war to engender it, while the Saudi led coalition and the Houthis fight each other, without concrete plans for what to do if the fighting ceases.

In November 2015 there were approximately 200,000 civilians trapped in the Houthi controlled area of Taiz, with destroyed health infrastructure and depleted food access.<sup>24</sup> By enforcing sieges throughout Yemen, combatants have deliberately impeded the delivery of food and humanitarian supplies from entering besieged territory. The resulting starvation and increased malnutrition rates of civilians have arguably been deliberately inflicted as a weapon of war. If the intent was to care for the people of Yemen during this civil war, the malnutrition levels and food insecurity statistics would improve. The warring parties could still fight, but their civilian population would not be suffering at a shocking rate.

This paper will examine several alarming impacts the war in Yemen has on the Yemeni people including the loss of food access and the resulting starvation during this three year civil war. The aim of this paper is to examine the various violations of international humanitarian law arising from the use of siege warfare and indiscriminate airstrikes, resulting in massive civilian food insecurity and starvation and the violations in the case Yemen. It further examines future criminal proceedings in Yemen, which represent a non-international armed conflict for the purposes of assessing war crimes and whether prosecution will be at the State level or at the International Criminal Court in the event of a potential Security Council referral. This paper also argues that while sieges may be lawful, all combatants have significant legal obligations to the civilian population

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<sup>24</sup> UN News Center, 'Central Yemeni City of Taiz under virtual siege, 200,000 need water, food- UN relief chief', 24 November 2015, <http://www.un.org/apps/news/story.asp?NewsID=52644#.WAw?ca47noV>.

under international humanitarian law. This paper examines the law governing humanitarian access to besieged areas including the obligation to deliver relief consignments and evacuating civilians out of active combat zones.

### **Research Problem and Research Questions**

This study proposes that the civil war played out by the Saudi led Gulf Cooperation Council (GCC) and the Houthi rebels has engendered a severe food crisis, bordering on famine, and the inability of the parties to pursue meaningful negotiation or mediation to end this civil war exacerbates the crisis, despite knowing the civil war is causing mass suffering. All parties are ignoring the evidence, continuing fighting, and inflicting and prolonging the suffering of a majority of the population of Yemen. At the same time, the military, political, and economic involvement of the Saudi Arabia-led coalition, aimed at restoring the rule of Yemen's internationally recognized President Abdu Rabbu Mansour Hadi, and Iran-supported Houthi-Saleh forces loyal to the previous President, Ali Abdullah Saleh, are complicit in the mass suffering, food insecurity, and malnourishment of civilians. Despite multiple attempts by the U.N. Special Envoy for Yemen to broker a peace agreement, the Saudi-led coalition and Houthi-Saleh forces continue to disagree on the fundamentals of a political settlement, thereby intensifying the burgeoning famine. Whether there is intent or the parties are acting recklessly, their priorities are not the well-being of Yemen as a whole.

Article 54 paragraph 1 of the First Additional Protocol of the 1977 Geneva Convention, states that “Starvation of civilians as a method of warfare is prohibited.”<sup>25</sup>

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<sup>25</sup> Article 54, Fourth Geneva Convention (1977).

Paragraph 2 additionally makes it clear that the prohibition holds, regardless of whether or not the intent is to starve a people. Current International Humanitarian Law (IHL) clearly states that the deliberate starvation of the civilian population as a tactic of war is prohibited and a prosecutable war crime. This prohibition finds expression in Additional Protocol I to the Geneva Conventions, which states that besieging forces may not starve civilians “as a method of warfare.” Similarly, it is prohibited to “attack, destroy, remove or render useless” any items necessary for civilians’ survival (e.g., food, land used to cultivate food, water, irrigation works, etc.), regardless of whether the objective is to starve the civilians or to cause them to relocate.

The hypotheses are:

1. Even though there are non-international armed conflict protocols and International Humanitarian laws in place, in the case of Yemen, the act of starving civilians is not seen in the eyes of the perpetrators as a concern due to the fact that the international community and international law rarely prosecutes countries. The murky waters of the law allow for the continued use of food as a weapon of war, and or war itself to directly or indirectly starve civilians.
2. The Saudi-led coalition, the Yemeni government, and the Houthi rebels, through the acts of siege warfare and its’ accompaniments, continued lack of adherence to the multitude of U.N. resolutions, and the refusal of all parties to alleviate the suffering of millions of Yemenis, have intensified the economic problems of an already undeveloped, fragile state and increased the starvation of the Yemeni people, and are continuing to violate international law.

### **Research Significance and Objectives**

The significance of this study is that typically the International Criminal Court (ICC) would only prosecute states or actors for a war crime involving the starvation of civilians if it is committed in an International Armed Conflict (IAC), not an intrastate conflict, and this is usually only under the umbrella of human rights crimes, not starvation itself unless the United Nations formally requests a referral for prosecutorial powers at the International Criminal court level.<sup>26</sup> As the Yemen Civil War, at this time of writing, is still considered a non-international conflict, even when conduct is clearly recognized as a war crime, or a crime against humanity, it is not always easy to find a court in which it will be prosecuted. The court would need to be an independent one, inside or outside of Yemen. Therefore, the act of starving civilians is not seen in the eyes of the perpetrators as of concern due to the fact that the International Criminal Court, at this times, is unable to prosecute. Additionally, the starvation of civilians itself is difficult to prosecute, as it is hard to find proof that an individual or group are culpable in the death of a starved person, as starvation itself may not lead to direct death, but during the starvation process, the person is more predisposed to disease, injury, and weakness to actually eat, if food became available.

### **Scope and Limitations**

First, all aspects of the Yemeni Civil War that are not related to the lack of food; its distribution, production, or access will not be studied. Secondly, this study is not implying that a famine is pending even though there are multiple news articles, non

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<sup>26</sup> <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

governmental organizations (NGOs), and United Nations (UN) comments decrying an impending famine. This study implies that due to the complexities of the civil war, starvation has increased due to the fact that Yemen relies on approximately 90% of imported foodstuffs. Also, the indiscriminate bombing of markets, hospitals, neighborhood, and food infrastructure is the focal point of study when researching incidents of violence.

This study is not to determine if the Yemen Civil War is a proxy war being played out by Saudi Arabia and Iran. The Yemen Civil War is a non-international war but if the Houthis continue to attack across Saudi borders, there is potential for an international response, pushing the war into the realm of the International Criminal Court. This author is also not judge or jury to any of the information put forth. The laws and international protocols cited are meant for one to ascertain whether they fit the Yemen situation, and from there, discuss if prosecution is warranted.

Lastly, this paper will also not discuss how the elements of corruption may play into the lack of food access and governmental agencies in Yemen. Saudi Arabia ranks 57 out of 180 countries in the 2017 Transparency International report (somewhat corrupt), and Yemen continues to rank in the top five to top ten most corrupt countries out of the 180 countries since 2012, analyzed by TI.<sup>27</sup>

### **Methodology**

The methodology of the research is qualitative. Within this approach, analysis will be concentrated by exploring academic journals and books, and garnering statistics from

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<sup>27</sup> [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](https://www.transparency.org/news/feature/corruption_perceptions_index_2017).

multiple organizations including but not limited to the World Health Organization (WHO), Organization for Economic Cooperation and Development (OECD), Transparency International (TI), The Armed Conflict Event Data Project (ACLED), United States Agency for International Development (USAID), Integrated Food Security Phase Classification (IPC), Amnesty International (AI), Famine Early Warning Systems Net (FEWS), The United Nations Office for the Coordination of Humanitarian Affairs (OOCHA), and the World Peace Foundation (WPF). The sources will be based on both qualitative and quantitative analyses in the field of siege warfare, blockades, civil war, famine, food as a weapon of war, and conflict resolution.

### **Breakdown of Chapters**

The remainder of this project proceeds as follows. Chapter Two is composed of a literature review with a theoretical framework that first reiterates the intrastate aspects of the Yemeni Civil war and what Geneva Conventions apply. This will be important as the next section discusses at length the physical destruction of the body due to lack of food. Following this, the chapter will explain siege warfare and the laws of war that are applicable when civilians are present. Chapter Three then explores two historical occurrences- Leningrad and the First Gulf War - where governments used food, access to food, and siege warfare as a weapon of war. The significance is that after the siege of Leningrad, International Humanitarian Law changed to further protect civilians from suffering. The significance of the First Gulf War is that, even though there were International Humanitarian laws in place, the Iraqi people were starved and no prosecution, reparation, or justice followed. This disparaging story sets the stage for Chapter Four, which is an in-depth analysis of the Yemen civil war, the harrowing

conditions for civilians, and the responses of the international community to influence both sides of the Yemeni crisis, with a plethora of evidentiary sources to show causality, and then the legal framework for future prosecution. Chapter Five offers a conclusion and relooks the hypothesis, as well as areas for further research.

## CHAPTER II- Conflict, Food Security and the Law

“What does it mean- exhaustion?  
 What does it mean- fatigue?  
 Every moment is terrifying,  
 Every moment of your painful arms and legs  
 Terrible hunger-Raving over bread  
 ‘Bread, bread,’ the heart beats.  
 Farm away in the gloomy sky,  
 The indifferent sun turns.  
 Your breath is a thin whistle  
 It’s minus fifty degrees  
 What does it mean- dying?  
 The mountains look on, and remain silent” (Nina Gagan- Torn)<sup>1</sup>

There have been numerous attempts to establish what is meant by famine and to determine what its causes might be. The search for an adequate definition is seen by many writers to be an essential preliminary to both theoretical analyses and practical action. Donors may not be motivated to act unless they are convinced that what is taking place is actually a famine. Analysts cannot begin to study the causes of a famine until they know what it is they are looking at. Is famine man-made? In the case of civil war, a famine, or a large swath of a population, may starve or be in such a state of severe malnourishment, that their future is unknown but most likely bleak without the cessation of violence and massive aid and reconstruction. And once the fighting stops, as eventually occurs in civil wars, who is the responsible individual or group that the victims of such atrocities can attempt to receive justice and reparations from?

This chapter breaks down the interstate and intra-state war clarification. This is necessary to discern because certain laws apply to warfare depends on the parties

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<sup>1</sup> Gagen-Torn, Nina, *Memoria*, Moscow, 1994.

involved. Nevertheless, as will be reiterated time and again, all parties in the Yemen intra-state armed conflict, including non-state armed groups, are responsible for complying with the requirements of international humanitarian law. Each party must respect and ensure respect for the laws of war. This obligation does not rely on reciprocity. Parties to a conflict must respect the requirements whether or not the opposing side accepts them. It also does not depend on the reason underlying the conflict or why any party has resorted to using force, whether they be government forces or non-state armed groups. All parties to an armed conflict must uphold the same standards.<sup>2</sup>

### **International Conflict Vs Non International Conflict**

An international armed conflict is conducted whenever there is armed conflict between two or more States.<sup>3</sup> International armed conflict is governed by common Article 2 to the four Geneva Conventions which applies to cases of declared war or armed conflict "between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them".<sup>4</sup> The classification of an international armed conflict is not dependent on the intensity of hostilities but rather if an armed conflict exists when there is the use of force between States".<sup>5</sup> Although numerous states have been involved in the conflict on the territory of Yemen, among them the Saudi led coalition (which includes Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Sudan, and United Arab Emirates), the United States, and Iran, the conflict represents a non-

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<sup>2</sup> <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

<sup>3</sup>International Committee of the Red Cross, "How is the Term 'Armed Conflict' Defined in International Humanitarian Law" (Opinion Paper, March 2008) at <https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> (accessed on 31 AUG 2018).

<sup>4</sup> Common Article 2, Four Geneva Conventions (1949).

<sup>5</sup> ICTY, *The Prosecutor v Dusko Tadic*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, IT-94- 1-A, 2 October 1995, para. 70.

international armed conflict because to date, the Yemeni government is waging a civil war primarily against non-State actors on Yemen territory. Significantly though, a non-international armed conflict may become **internationalized** when a State holds overall control over the paramilitaries or militias operating in the conflict. In relation to Yemen, there are grounds to indicate that a possible proxy war is being waged.<sup>6</sup> For example, the control for proxy warfare must be "more than mere provision of financial assistance or military equipment or training," but may exist when the State "has a role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group".<sup>7</sup>

A non-international armed conflict is a conflict which takes place between government forces and non-State actors or is a conflict between two or more groups of non-state actors. There are two classifications of a non-international armed conflict deriving from common Article 3 to the four Geneva Conventions (1949) and the definition provided in Article 1 of Additional Protocol II (1977). Common Article 3 governs "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties". This includes conflicts, which occur between government forces and non-State actors or between two or more groups of non-State actors. Generally the hostilities will reach a certain threshold of intensity that differentiates itself from sporadic internal disturbances or riots.<sup>8</sup> A non-international armed conflict takes place when there is "protracted armed violence between

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<sup>6</sup> Note for further research.

<sup>7</sup> *Prosecutor v Tadic*, Appeals Chamber Judgment, Case No. IT-94-1-A. 15 July 1999, para 131-140, 145. (emphasis added).

<sup>8</sup> ICTY, *The Prosecutor v Fatmir Limaj, Judgment*, IT-03-66-T, 30 November 2005, para 135-170.

governmental authorities and organized armed groups or between such groups within a State."<sup>9</sup> The non-State forces must have a certain command structure and be capable of maintaining military operations in order to be considered "parties to the conflict".<sup>10</sup> A narrower definition of non-international armed conflict is contained in Article 1 of Additional Protocol 11 (1977), applying to 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".<sup>11</sup>

The Protocol applies to conflict carried out between States and other organized groups or dissident armed forces. However distinct from common Article 3, Additional Protocol II does not apply to armed conflict occurring between non-State armed groups only. In addition, the Article relates to armed force which takes place between dissident armed forces and other non-State actors that have sufficient territorial control necessary to "enable them to carry out sustained and concerted military operations".<sup>12</sup>

As stated earlier, the conflict in Yemen represents a non-international armed conflict. This means that the legal framework of Common Article 3 to the Four Geneva Conventions applies alongside Additional Protocol II and customary international law. Yemen is a party to the four Geneva Conventions of 1949 and Additional Protocols 1

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<sup>9</sup> ICTY, *Prosecutor v Tadic*, Decision on the Defense Motion for Interlocutory Appeal, 2 October 1995, IT-94-1, para. 70.

<sup>10</sup> International Committee of the Red Cross, "How is the Term 'Armed Conflict' Defined in International Humanitarian Law" (Opinion Paper, March 2008) at <https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> (accessed on 31 May 2016).

<sup>11</sup> Article 1, Additional Protocol II (1977).

<sup>12</sup> Article 1(1), Additional Protocol II (1977).

(1977) and Additional Protocol 11 (1990).<sup>13</sup> The armed conflict taking place between the Yemeni government and the Houthis represents a non-international armed conflict under common Article 3 to the Geneva Conventions. Hostilities have advanced to a state of protracted armed violence and have reached the intensity of armed hostilities. One criteria for engaging the intensity of armed violence is whether "the conflict has attracted the attention of the United Nations Security Council, and whether any resolutions on the matter have been passed."<sup>14</sup> Since 2015, there have been several United Nations Security Council resolutions on Yemen, for example UNSC Res 2402 (2018) reiterated its call for "all parties in Yemen to adhere to resolving their differences through dialogue and consultation, reject acts of violence to achieve political goals, and refrain from provocation."<sup>15</sup>

To reiterate, all parties in the Yemen armed conflict, including non-state armed groups, are responsible for complying with the requirements of international humanitarian law. Each party must respect and ensure respect for the laws of war. This obligation does not depend on reciprocity. Parties to a conflict must respect the requirements whether or not the opposing side abides by them. It also does not depend on the reason underlying the conflict or why any party has resorted to using force, whether government forces or non-state armed groups. And all parties to an armed conflict are held to the same standards. Yemeni allies and the Houthi forces and their Yemeni allies are governed by international humanitarian law set out in treaties and in the rules of customary international law. The most important treaty law is Common

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<sup>13</sup> <https://www.icrc.org/eng/warandlaw> (accessed 8 September 2018).

<sup>14</sup> ICTY, *Prosecutor v Boiikoski and Tarculovski*, IT-04-82-T (10 July 2008), para 177.

<sup>15</sup> United Nations Security Resolution S/RES/2402 (2018).

Article 3 to the Geneva Conventions of 1949, to which all members of the coalition are party. Common Article 3, which sets forth minimum standards for all parties to a non-international armed conflict. Yemen and some States participating in the armed conflict are also party to Protocol II to the Geneva Conventions, which provides further protections for combatants and civilians during non-international armed conflicts.<sup>16</sup>

International Humanitarian Law, though not perfect, sets the standards of conduct during war and this will be revisited more in-depth later in this chapter as well as Chapter Four. War, in any form, has second and third order of effects that sadly, affect mainly civilians, one of them being the lack of or complete destruction of food security.

### **Food Security**

Food security represents "a situation that exists when all people, at all times, have physical, social, and access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life. Food security is compartmentalized into three areas: availability, access, and utilization of food. These areas are inherently hierarchical, with availability necessary but not sufficient to ensure access, which is, in turn, necessary but not sufficient for effective utilization<sup>17</sup>.

For most of human history, lives were short and unhealthy due in large part to insufficient macronutrient (carbohydrate, fat, and protein) intake. Beginning in the 18th century, however, a succession of countries escaped the suffering of poverty and

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<sup>16</sup> <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

<sup>17</sup> Webb, P. et al., *Journal of Nutrition* 136 14045 (2006).

lack of nutrition trap<sup>18</sup> thanks largely to increased food availability made possible by advances in agricultural production; hence, the common association of food security with supply-side indicators, typically measured in daily calories per food item and average daily calories for the average person to live (approximately 1800-2000).<sup>19</sup> Adequate availability is necessary, but does not ensure universal access to "sufficient, safe, and nutritious food."

Access is more closely related to social science concepts of individual or household well-being: What is the range of food choices open to the person(s), given their income, prevailing prices, and formal or informal safety net, which they can access food? As Nobel Laureate Amartya Sen wrote, "starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat. While the latter can be a cause of the former, it is but one of many possible causes"<sup>20</sup>. Access reflects the demand side of food security, food distribution and in the sociocultural limits on what foods are consistent with prevailing tastes and values within a community. Access also accentuates problems in responding to adverse disturbances and war such as unemployment, price spikes, or the loss of livelihood-producing assets. Through the access lens, food security's close relationship to poverty and to social, economic, and political marginalization comes into clearer focus. But because access is a multidimensional concept, measurement becomes more difficult than with availability.

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<sup>18</sup> Fogel, R.W. (2004). *The Escape from Hunger and premature Death, 1700-2100: Europe, America, and the Third World*. Cambridge Univ. Press, Cambridge.

<sup>19</sup> Barrett, Christopher. (2010). "Measuring Food Insecurity." *Science* 327/596, 825-8.

<sup>20</sup> Sen, Amartya. (1981) *Poverty and Famines*. Clarendon, Oxford, 1.

Utilization reflects concerns about whether individuals and households make good use of the food to which they have access. Do they consume nutritional foods they can afford, or do they choose a nutritionally inferior diet? Are the foods safe and properly prepared, under sanitary conditions, so as to provide nutritional value? Is a person's health such that they can metabolize essential nutrients? Utilization concerns raise greater attention to dietary quality, especially micronutrient deficiencies associated with insufficient intake of important minerals and vitamins. When there are populations that are food insecure, how do humanitarian agencies target them for relief? Does assistance reach the intended population? Good targeting is exceedingly difficult. The neediest individuals are not always easily identified, even in community-based targeting efforts, for example, due to isolation. And sadly, as in the case of Yemen, people are starving and in desperate need of humanitarian food aid to survive. And starvation is a slow, torturous way to die in the boundaries of city or rural area in the 21<sup>st</sup> century.

### **Starvation**

Starvation is a slow and excruciating process. It takes about two months for a healthy adult to die from starvation. Victims of starvation die of nutritional dystrophy, a process whereby, once the body utilizes all its fat reserves, the muscles break down in order to acquire energy. The small intestine deteriorates, and it becomes increasingly difficult for the victim to absorb nutrients from any food he or she is able to find. As a defense mechanism, the body reduces the activity of the vital organs such as the heart and liver and the victim suffers not only from muscular weakness but from fatigue. Some victims are afflicted by a painfully acute over-excitement. The water content of the body reduces

at a slower rate than wasting of the muscles and tissues, and the flaccidity of the body increases. Some victims of starvation get hunger edema and swell up with excess water. The swelling begins in the abdomen and legs and spreads throughout the body. Blood pressure drops and the victim is inundated by keratitis (redness and soreness of the cornea), sore gums, headaches, pains in the legs, neuralgic pain, tremors and ataxia (a loss of control of the limbs). The victim has an intense craving for salt and carbohydrates and uncontrollable diarrhea. Just before death, the victim swings from depression to intense irritation and then a profound lethargy.<sup>21</sup> Organ failure is the final cause of death.

There are very few statistics on the number of Yemenis who have starved to death. The reason may be lack of data, hidden data, or that most people are dying of the diseases brought on by starvation as mentioned above. There are though, people starving in Yemen, and statistics for the malnourished are prevalent and rising at an alarming level. Below is an explanation of what many Non-Governmental Organizations like the World Health Organization, Feed the Children, researchers, the World Food Program, and the Famine Early Warning Systems Network are reporting frequently.

### **Undernutrition**

There are 4 broad sub-forms of undernutrition: wasting, stunting, underweight, and deficiencies in vitamins and minerals. Undernutrition renders children in particular more vulnerable to disease and death.

**Wasting-** Low weight-for-height is known as wasting. This indicates recent and severe weight loss. The main underlying causes of wasting are:

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<sup>21</sup> Magee, H.E., 'Some Effects of Inanition and their Treatment', *Proceedings of the Nutritional Society*, 3 (1945); 53:7.

- “poor access to appropriate, timely and affordable health care;
- inadequate caring and feeding practices (e.g. low quantity and quality of complementary food);
- poor food security – not only in humanitarian situations, but also an ongoing lack of food quantity and diversity, characterized in many resource-poor settings by unvaried diet with low nutrient density, together with scant knowledge of patterns of food storage, preparation and consumption; and
- lack of a sanitary infrastructure, including access to safe water, sanitation and hygiene services”.<sup>22</sup>

These factors are strongly related to each other and have a cyclical relationship with wasting. Poor diet leads to increased risk of infection, and infection has a negative effect on nutritional status. A previously healthy child can quickly become wasted when faced with a severe infection, potentially leading to a loss of appetite. As wasting worsens, children become more susceptible to infections. This is known as the “vicious cycle” between infection and wasting such as diarrhea, which can cause rapid weight loss.<sup>23</sup> Another suggested risk factor for wasting in childhood is having low birth weight or being small for gestational age. A young child who is moderately or severely wasted has an increased risk of death, but treatment is possible.

**Stunting-** Low height-for-age is known as stunting. It is defined as a height that is more than two standard deviations below the World Health Organization (WHO) child growth standards median. Stunting is the result of chronic or recurring undernutrition, usually associated with poor socioeconomic conditions, poor maternal health and nutrition, frequent illness, and/or inappropriate infant and young child feeding and care in early life. Stunting holds children back from reaching their physical and cognitive potential.

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<sup>22</sup> Childhood Stunting: Context Causes and Consequences. WHO conceptual framework. Geneva: World Health Organization; 2013 ([http://www.who.int/nutrition/events/2013\\_ChildhoodStunting\\_colloquium\\_14Oct\\_ConceptualFramework\\_colour.pdf](http://www.who.int/nutrition/events/2013_ChildhoodStunting_colloquium_14Oct_ConceptualFramework_colour.pdf), accessed 5 August 2018).

<sup>23</sup> Ibid.

Childhood stunting is one of the most significant impairments to human development. Stunting has long-term effects on individuals and societies, including: diminished cognitive and physical development, reduced productive capacity and poor health, and an increased risk of degenerative diseases such as diabetes.<sup>24</sup>

**Underweight, micronutrient deficiencies and severe malnutrition** - Children with low weight-for-age are known as underweight. A child who is underweight may be stunted, wasted, or both. Micronutrient-related malnutrition- insufficiencies in intake of vitamins and minerals, can also be grouped together. Micronutrients allow the body to produce enzymes, hormones, and other substances that are essential for proper growth and development. Iodine, vitamin A, and iron are the most important in global public health terms; their deficiency represents a major threat to the health and development of populations worldwide, particularly children and pregnant women in low-income countries.<sup>25</sup>

Severe acute malnutrition is defined by a very low weight for height (below -3z scores of the median WHO growth standards), a presence of severe wasting, or by the presence of nutritional edema. Decreasing child mortality and improving maternal health depend heavily on reducing malnutrition. Although the median under-five case-fatality rate for severe acute malnutrition typically ranges from 30% to 50%, it can be reduced substantially when physiological and metabolic changes are taken into account. Management of severe acute malnutrition according to the World Health Organization guidelines can reduce the case-fatality rate by about 55% in hospital settings. Recent

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<sup>24</sup> [http://www.who.int/nutrition/publications/globaltargets2025\\_policybrief\\_stunting/en](http://www.who.int/nutrition/publications/globaltargets2025_policybrief_stunting/en).

<sup>25</sup> <http://www.who.int/news-room/fact-sheets/detail/malnutrition>.

studies suggest that severe acute malnutrition in children above 6 months of age who have no medical complications can be managed at the community level using specially formulated ready-to-use therapeutic foods<sup>26</sup>.

In a study on the importance of childhood nutrition, The Cebu Longitudinal Health and Nutrition Survey (CLHNS), tracking children born in 1983 and following the cohorts until 2009, found that the crucial period for infant nutrition begins in pregnancy. Poor fetal nutrition, as manifested through size at birth, is associated with poor adult health. Continued efforts to ensure proper nutrition during pregnancy to lessen the risk of low birth weight are recommended, but this can be impossible in a war zone. The importance of proper infant feeding on health, not only during infancy but through adulthood, is particularly highlighted in this study. The CLHNS findings support the WHO recommendations for exclusive breast-feeding up to 6 months, timely introduction of complementary foods (not earlier than 6 months), and continued breastfeeding until two years.<sup>27</sup> While these recommendations are for all mother and children worldwide, the lack of food access, micronutrient filled food, and good sanitation in a war zone minimizes or even halts the ability to follow them.

The current and long-term effects of starvation and malnutrition on cognitive and behavioral development are critical. The brain is vulnerable to the effects of deficiencies during critical periods of brain development from the second trimester of pregnancy until 2 years of age. Malnutrition experienced at these ages will have lifelong consequences that are not reversed by adequate nutrition after the damage is

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<sup>26</sup> [http://www.who.int/nutrition/topics/severe\\_malnutrition/en](http://www.who.int/nutrition/topics/severe_malnutrition/en).

<sup>27</sup> Borja, Judith B. (2013). "The Impact of Early Nutrition on Health: Key Findings from the Cebu Longitudinal Health and Nutrition Survey (CLHNS)." *Malaysian Journal of Nutrition* Vol 19(1), 6.

done. Long-term effects of prenatal, postnatal and childhood malnutrition have been reported even after a long period of recovery from the illness itself. A longitudinal 30 year study in Barbados beginning in 1967, which followed individuals, now 28-34 years of age, who experienced moderate to severe malnutrition during their first year of life and a healthy comparison group from the same classrooms showed that malnutrition had a negative impact on cognitive and behavioral functioning throughout childhood and adolescence, even after controlling for socioeconomic conditions and other factors in the home. It also found a fourfold increase from 15% to 60% in the frequency of attention deficit disorder following infantile malnutrition. Attention deficits persisted through adolescence and was closely associated with reduced performance on a national high school examination at 11 years of age. Under conditions of famine, it is important to include early and all-inclusive interventions to reverse not only the medical problems resulting from malnutrition, but also the cognitive and behavioral deficits arising from famine. In the absence of necessary interventions, decreased behavioral function may continue long beyond the incident, may impact the quality of life over the long-term, and increase costs to society.<sup>28</sup>

In the Yemeni case, suffering is manifested due to past economic issues, exacerbated by conflict and the resulting overwhelming food access disaster. The Saudi led coalition and the Houthis have laid siege to Yemen through multiple tactics that are explained in the next section.

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<sup>28</sup> Galler, JR; Barrett, LR. (2001). "Children and famine: long-term impact on development." *Ambulatory Child Health*. 7(2): 85.

## **Conflict and Food Access**

As discussed earlier in this chapter, the access to food, albeit, the lack of access to food, causes devastating physical detriment to the victim. But to get to this level of humanitarian disaster, leaders of both sides, make the decision in their war planning on what they may find to be more cost effective, what will destroy more of the enemy's territory, or what will break the enemies will. The next four sections will discuss these tactics, and the legal ramifications of said tactics according to International law.

### **Siege Warfare and the Law**

Sieges are what geographers call spatial or territorial strategies, and their mechanisms control people and populations through the reordering of physical space.<sup>29</sup> They bring about a circumscription, shrinkage, and transformation of space as well as new cartographies of power and territory. They are modes of warfare that rearrange and appropriate space; they measure, regulate, mark, organize, and transform it.<sup>30</sup> A siege is a military model. It refers to a type of warfare that executed, from the perimeter of a territorial space, systematic deprivation, territorial limits, and isolation on a population. Sieges are a form of low-intensity warfare. Unlike open battles, which aim at a climactic clash or collision of combat forces, sieges are characterized by protracted and recursive warfare based on persistent pressure. Sieges utilize space not only by populating it with military equipment but by constricting it. At a minimum, a siege encompasses two basic techniques of isolation: physical closure and economic blockade. Physical closure

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<sup>29</sup> Barney Warf and Santa Arias. *The Spatial Turn: Interdisciplinary Perspectives* (London and New York: Routledge, 2009).

<sup>30</sup> Paul Hirst, *Space and Power: Politics, War and Architecture* (Cambridge: Polity, 2005).

imposes restrictions on the movement of people across a specific line, while the economic blockade confines the flow of goods, services, and capital across that same line. The siege space, in other words, is defined by a variety of mechanisms that monitor, regulate, and obstruct such flows. Consolidated around a perimeter, these mechanisms take the material form of physical and electronic borders, fences, and barriers, actual and virtual architectures of control and surveillance, and restricted military zones. Spatial compartmentalization is an established technology of social control.<sup>31</sup> Sieges produce a particular form of compartmentalization around a fortified perimeter. Power presents itself not so much in the capacity to kill, injure, arrest, and detain individuals or destroy their property but in the ability to interrupt the movement of people, transportation, goods, services, capital, electricity, and sewage.<sup>32</sup> A siege generates coercion by compressing movements that constitute social life. Everyday life is placed on hold.<sup>33</sup> Sieges thus deploy indirect and spatial forms of violence. As a result, sieges are drawn out, reaching its effect only cumulatively. Sieges, in other words, require patience, which is quite different from Clausewitzian warfare.<sup>34</sup> As a result, (and in contrast to a battle or a sustained bombing campaign) sieges do not lead to sudden and dramatic spikes in casualty rates; the physical harm and damage inflicted by a siege increases gradually and continuously.

The siege process follows a more or less precise protocol: from the summons to surrender issued by a besieging commander to the declaration of siege, typically by the

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<sup>31</sup> Fanon, Frantz. (2004) *The Wretched of the Earth*, trans. Richard Philcox. New York: Grove Press, 15.

<sup>32</sup> Castells, Manuel. (1996). *The Rise of the Network Society*. Malden, MA: Blackwell.

<sup>33</sup> *Movement and the Ordering of Freedom: On Liberal Governances of Mobility* (Durham, NC: Duke University Press, 2015).

<sup>34</sup> Edward N. Luttwak, "Toward Post-Heroic Warfare," *Foreign Affairs* 74 (1995), 117.

firing of the besiegers' cannons, to the different ways in which a fortress was taken. Medieval law distinguished between a town that surrendered and thus was taken by treaty, and a town that was taken by storm. Whereas surrender by treaty imposed specific conditions on the besiegers, seizure by storm implied a forfeit of all lives and property to the besiegers. The inhabitants' goods and lives were not forfeited because they had lost the siege but because of the willful disregard of a prince's order to surrender.<sup>35</sup> As a consequence, pillage was not an act of war but an act of justice. In medieval times, there was hence quite a difference in a field battle. Two sides recognized each other as equals, and victory was taken to be a result of divine judgment. A siege on the other hand, involved the refusal of a lord's order to surrender (and thus an insult to the crown).<sup>36</sup> When looking at siege examples in the case of Yemen, the United Nations and its partners recently reiterated that a full-scale siege like offensive against the port city of Al-Hudaydah would aggravate the humanitarian disaster even further, put hundreds of thousands of lives at risk and pose the threat of a new, widespread cholera epidemic and famine. Urban warfare or a siege would be equally catastrophic.<sup>37</sup>

The legality of siege warfare received considerable attention following the siege of Sarajevo (April 1992–February 1996) during the Balkan war motivated by the breakup of the former Yugoslavia. Maj. Gen. Stanislav Galić, who commanded the Bosnian Serb unit that encircled the city, was prosecuted for his role in a shelling and sniping campaign in the city, the capital of Bosnia-Herzegovina. The International Criminal Tribunal for the

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<sup>35</sup> Keen, M.H. (1965) *The Laws of War in the Late Middle Ages*. Routledge and Kegan Paul: London, 123.

<sup>36</sup> Schmitt, Carl. *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G.L. Ulmen (New York: Telos Press, 2003), 140–147.

<sup>37</sup> UN Security Council member Mr Vareka (Sweden) comments during 2 August 2008 S/PV.8323.

Former Yugoslavia (ICTY) convicted Galić of, among other offenses, “inflicting terror” on the civilian population in violation of Article 51 of Additional Protocol I and Article 13 of Additional Protocol II, both incorporated into the International Criminal Tribunal (ICT) Statute, which allows for the prosecution of “violations of the laws and customs of war.” He was sentenced to 20 years’ imprisonment, a sentence that was increased on appeal. It should be noted that Galić was not sentenced for starving the individuals of Sarajevo, even though the population received only 1/6<sup>th</sup> of its food needs.<sup>38</sup>

Notwithstanding this precedent, siege warfare is not unlawful. That said, the evolution of how armed conflicts are now fought in cities rather than in battlegrounds far from the civilian population, coupled with improvements in International Humanitarian Law make “it very difficult for a commander to conduct a siege that is both successful and lawful.” Siege warfare remains lawful under contemporary law as long as it is directed at combatants and those directly participating in hostilities.<sup>39</sup>

Article 27 of the Hague Regulations (1907) provides for siege warfare:

"In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand".<sup>40</sup>

Article 27 permits sieges as a method of warfare in international armed conflict while also emphasizing implicitly the application of the principles of distinction, military

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<sup>38</sup> Crawshaw, Steve.(1992). “400,000 at risk in Bosnia Famine. The West Woke up too late to warnings about the Yugoslav Conflict.” *Independent.co.uk*. 11 October.

<sup>39</sup> Van Schaack, Beth. 2016. ‘Siege Warfare and the Starvation of Civilians as a Weapon of War’, at <https://www.justsecurity.org/29157/siege-warfare-starvation-civilians-war-crime>.

<sup>40</sup> Article 27, Hague Regulations (1907).

necessity and proportionality.<sup>41</sup> There is no specific law governing siege warfare in non-international armed conflict but it would appear from State practice that siege warfare is not prohibited.<sup>42</sup> Nevertheless, the principles governing the conduct of hostilities apply to the besieged area. Sieges are employed as a tactic of warfare to "induce the defended locality to surrender".<sup>43</sup> However, total warfare on the civilian population is prohibited under the laws of armed conflict.<sup>44</sup> The prohibition of attacks on civilians and the principles of distinction represent clear principles of customary international law and form the basis of international humanitarian law.<sup>45</sup> All the same, civilians are used as instruments to pressure parties to an armed conflict into certain concessions.<sup>46</sup> Therefore, the use of a siege is a military tactic to maintain constant pressure on the opposing force.<sup>47</sup>

Article 13(2) of Additional Protocol II provides that "the civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited".<sup>48</sup> The protection is repeated in Article 6 of the 1990 Turku Declaration of

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<sup>41</sup> Boothby, W.H. (2012). *The Law of Targeting*. Oxford University Press; Bernhardt, R. (2000). *Encyclopedia of Public International Law*, Volume 4. North-Holland, 415.

<sup>42</sup> Croatia, District Court of Zadar. (1997). *Prosecutor v Perici*, Judgment. 24 April

<sup>43</sup> Dinstein, Yoram. (2010). *The Conduct of Hostilities under the Law of International Armed Conflict*. Cambridge University Press: 222.

<sup>44</sup> Meron, T. (2000). "The Humanization of Humanitarian Law." *The American Journal of International Law*. 94 (2): 239-278.

<sup>45</sup> ICRC, *Nuclear Weapons Case*, para. 78. <https://casebook.icrc.org/case-study/icj-nuclear-weapons-advisory-opinion>.

<sup>46</sup> Darcy, S. (2014). *Judges, Law and War. The Judicial Development of International Humanitarian Law*. Cambridge University Press: 211. (emphasis added).

<sup>47</sup> S. Watts, 'Under Siege: International Humanitarian Law and Security Council Practice concerning Urban Siege Warfare' *Research and Policy Paper Harvard Law School* 2014, 7.

<sup>48</sup> Article 13(2), Additional Protocol II (1977).

Minimum Humanitarian Standards<sup>49</sup> On this basis, in *Prosecutor v Galic*, the International Criminal Tribunal for the Former Yugoslavia found that attacks on the civilian population during the siege of Sarajevo included both direct and disproportionate attacks, which amounted to "unlawfully inflicting terror upon civilians".<sup>50</sup> There Galic had orchestrated acts amounting to terrorism during siege warfare through:

"a plan of terrorizing and mistreating the civilians", "open[ing] fire from infantry arms [...] with only one goal to terrorize and expel the remaining civilians", "open[ing] fire from howitzers, machine guns, automatic rifles, anti-aircraft missiles only to create the atmosphere of fear among the remaining farmers", and "carrying out the orders of their commanders with the goal to terrorize and threaten with the demolishing of the *Peruta* dam".<sup>5</sup>

Moreover, Article 51(3) of Additional Protocol I (1977) reaffirms civilians' general protection from targeting but withdraws that protection from civilians "for such time as they take a direct part in hostilities". The provision derives from the wording contained in common Article 3 to the four Geneva Conventions of "persons taking no active part in the hostilities" governing non-international armed conflict.<sup>51</sup>

Specific to non-international armed conflict, persons who have a "continuous combat function" will be considered combatants for the purposes of targeting.<sup>52</sup> Civilians will lose protection from attack, so as long as they engage in "continuous combat function".<sup>53</sup>

The parameters of continuous combat function are less clear. Nevertheless, the

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<sup>49</sup> Declaration of Minimum Humanitarian Standards, reprinted in Report of the Sub Commission on Prevention of Discrimination and Protection of Minorities on its Forty-sixth Session, Commission on Human Rights, 51st Sess., Provisional Agenda Item 19, at 4, U.N. Doc. E/CN.4/1995/116 (1995)(Turku Declaration).

<sup>50</sup> *Prosecutor v Galic*, Appeals Chamber Judgment, Case. No. IT-98-29-A, 30 November 2006, para. 87-90.

<sup>51</sup> ICRC, Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Conflicts not of an International Character at <https://www.icrc.org/ihl/WebART/375-590006> (accessed on 8 September 2018).

<sup>52</sup> Melzer, N. (2009) "Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law", *ICRC*. 45.

<sup>53</sup> *Ibid*, 21

International Committee of the Red Cross (ICRC) Directive Guidance ensures that civilian "production and supply of weapons, equipment, food, and shelter, or through economic, administrative, and political support" does not constitute civilian direct participation in hostilities.<sup>54</sup> As such, a distinction may be drawn between the conduct of hostilities and war sustaining activities.<sup>55</sup> Accordingly, civilians must be protected from attack during siege warfare and civilian efforts to sustain a besieged force through food, shelter and the supply of equipment will not amount to direct participation.<sup>56</sup>

There is relatively little difference between the provisions of international and non-international armed conflict in terms of regulating siege warfare. The general principles governing conduct of hostilities enumerated in Additional Protocol I and repeated in Additional Protocol II represent customary international law and as such, apply to non-state actors.<sup>57</sup> For example, both ICRC Rule 5 Definition of Civilians and Article 13(2) of Additional Protocol II prohibit acts making civilians the target of attack or spreading terror among the civilian population.<sup>58</sup> International Committee of the Red Cross Rule 53 prohibiting Starvation as a Method of Warfare and Article 14 of Additional Protocol II (1977) prohibit starvation as a method of combat and destruction or removal of "objects indispensable to the survival of the civilian population".<sup>59</sup> Similarly, Rule 55 governing Access for Humanitarian Relief to Civilians in Need is enshrined in Article 18 of

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<sup>54</sup> Ibid, 15.

<sup>55</sup> Ibid, 52.

<sup>56</sup> Crawford, E. (2015). *Identifying the Enemy: Civilian Participation in Armed Conflict*. Oxford University Press, 200.

<sup>57</sup> Power, Susan, *Siege Warfare in Syria: Prosecuting Starvation of Civilians*, Amsterdam L.F. 1 2016. 8.

<sup>58</sup> IJC1 RC Customary IHL, Rule 5. Definition of Civilians; Article 13, Additional Protocol II (1977).

<sup>59</sup> ICRC Customary IHL, Rule 53. Starvation as a Method of Warfare; Article 14, Additional Protocol II (1977).

Additional Protocol 11 (1977) on Relief Societies and Relief Action.<sup>60</sup> Classification of conflict as non-international armed conflict or international armed conflict assumes particular significance only after the fact, when prosecuting war crimes committed during siege warfare.

The sieges enforced by Yemeni forces, and rebel Houthi forces are lawful regardless of whether the conflict is classified as an international or non-international armed conflict. Nevertheless, direct attacks on civilians, and disproportionate attacks carried out without consideration of military necessity and lacking precaution for the civilian population are unlawful. In 2015, the UN Commission of Inquiry outlined that "combat tactics employed by all sides to the Yemeni armed conflict, such as the use of siege warfare, indiscriminate shelling and use of air power have resulted in mass civilian casualties. Similarly, attacks perpetrated on civilians such as aerial bombardment and shelling by Coalition forces during siege warfare may amount to terrorism."<sup>61</sup>

The most recent violations are the Saudi led coalition's bombings of civilian infrastructure in Al-Hudaydah, including the health, water and sanitation services that are crucial to coping with the new cholera outbreak. Recently there were attacks on a market and near a hospital. These actions violate not only the prohibition of attacking civilians, but also the principles of proportionality and necessity.<sup>62</sup> Although the employment of siege warfare is lawful during armed conflict, combatants still have humanitarian obligations to the civilian population within besieged areas. This includes ensuring the

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<sup>60</sup> I19C RC Customary IHL, Rule 55. Access for Humanitarian Relief to Civilians in Need; Article 18, Additional Protocol II (1977).

<sup>61</sup> 8323rd meeting Thursday, 2 August 2018, 3 p.m. New York.

<sup>62</sup> This will be discussed in-depth in Chapter IV.

provision of humanitarian assistance such as the passage of relief consignments into the territory and providing where possible, for the evacuation of civilians. Under Article 23 of the Fourth Geneva Convention (1949) parties to the conflict are obliged to ensure the passage of consignments of foodstuff and medicines intended for children under the age of fifteen and pregnant women.<sup>63</sup> And when civilians are involved there must be a clear distinction between civilian and military areas of operation when the objective of those fighting are clear.

### **Civilian Objects and Military Objectives in Non-International Armed Conflict-**

The combatant must not only discriminate between civilians and combatants during attacks on besieged territory, but must also distinguish between civilian objects and military objectives. Although the protection was originally dropped from Additional Protocol II, it undoubtedly applies as a norm of customary international law.<sup>64</sup>

The distinction appears once more in Amended Protocol II to the Convention on Certain Conventional Weapons and Protocol III to the Convention on Certain Conventional Weapons,<sup>65</sup> which applies to non-international armed conflict, though Yemen has not yet ratified Protocol III. The distinction is further provided for in the Second Protocol to the Hague Convention for the Protection of Cultural Property, which Yemen ratified in 1990.<sup>66</sup> In this regard, attacks on besieged areas may only be directed

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<sup>63</sup> Article 23, Fourth Geneva Convention (1949). Also discussed in depth under relief consignments section

<sup>64</sup> ICRC Customary IHL, Rule 7. The Principle of Distinction between Civilian Objects and Military Objectives.

<sup>65</sup> Protocol III to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, at [http://disarmament.un.org/treaties/t/ccwc\\_p3](http://disarmament.un.org/treaties/t/ccwc_p3) (accessed on 8 September 2018).

<sup>66</sup> [https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=475](https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=475) (accessed 9 SEP 2018).

at military objectives.<sup>67</sup> In terms of targeting and 'area bombardment', the whole besieged area cannot be treated as a single military objective. Rule 13 of the International Committee of the Red Cross codification of international humanitarian law prohibits: "attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects".<sup>68</sup> Again this provision is not as readily identifiable in the treaties on non-international armed conflict signed by Yemen. However, an attack on an entire town would represent an 'indiscriminate attack', which is unlawful under customary international law as determined by the international tribunals.<sup>69</sup>

In reference to Yemen, the President of the Security Council dated 15 March 2018 stated that the Security Council was gravely distressed at the level of violence in Yemen, including indiscriminate attacks in densely populated areas, and the impact this had upon civilians, including large numbers of civilian casualties and damage to civilian objects.

The UN Security Council called on all parties to

- “comply with obligations under international humanitarian law,
- respect the principle of proportionality and at all times,
- distinguish between the civilian population and combatants, and between civilian objects and military objectives,
- take precautions to avoid, and in any event minimize, harm to civilians and civilian objects and infrastructure,
- end the recruitment and use of children, and
- end other violations committed against them in violation of applicable international law, in order to prevent further suffering of civilians.”<sup>70</sup>

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<sup>67</sup> ICRC Customary IHL, Rule 7. The Principle of Distinction between Civilian Objects and Military Objectives.

<sup>68</sup> ICRC Customary IHL, Rule 13. Area Bombardment.

<sup>69</sup> ICRC Customary IHL, Rule 13. Area Bombardment, Commentary at <https://www.icrc.org/customary-ihl/eng/docs/v1chachapter3rule13> (accessed on 8 September 2018);

<sup>70</sup> Statement by the President of the Security Council, United Nations, S/PRST/2018/5, 15 March 2018.

Both Rule 22 of the International Committee of the Red Cross codification of customary international humanitarian law and Article 13(1) of Additional Protocol II require that parties to the conflict "take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks".<sup>71</sup> The principle of precaution requires that civilians be given advance warning of planned attacks on military objectives, unless the tactical situation does not permit it. The principle of precaution applies not only to the planning of an attack but right up until the very moment the decision is made to launch the attack.<sup>72</sup>

On 2 August 2018, the UN Security Council received reports that attacks occurred around the entrance to one of the few functioning public hospitals in Al-Hudaydah and an adjacent fish market, causing civilian casualties, without warning. Since 1 June, 2018 violence has forced more than 340,000 people from their homes across the governorate. Most are taking shelter in host communities near their areas of origin, while smaller numbers have arrived in Sana'a, Aden and surrounding areas.<sup>73</sup> The toll of this conflict on civilians and civilian infrastructure is devastating. Incidents in which civilians are killed or injured continue to be reported with alarming regularity. In addition, in Sa'ada, a water facility was hit for the third time in July, depriving over 10,000 people access to water.

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<sup>71</sup> ICRC Customary IHL, Rule 22. Principle of Precautions against the Effects of Attacks; Article 13(1) Additional Protocol II of 1977.

<sup>72</sup> J.F. Queguiner, 'Precautions under the law governing the conduct of hostilities' *International Review of the Red Cross* 2006 – 88, 864.

<sup>73</sup> S/PV.8323 (2 August 2018).

And if, as we see in the case of Yemen, and will see in the historical cases, when civilians areas are destroyed and the food access unavailable, there are laws that require combatants to allow for humanitarian access and the relief consignments involved to decrease the suffering of a population in a combat zone.

**Humanitarian Access to Besieged Areas-** Although the employment of siege warfare is lawful during armed conflict, combatants still have humanitarian obligations to the civilian population within besieged areas. This includes ensuring the provision of humanitarian assistance such as the passage of relief consignments into the territory and providing where possible, for the evacuation of civilians. Notwithstanding the continuous scaling up of humanitarian operations, serious obstacles persist.

Inside Yemen, humanitarian personnel face numerous restrictions, particularly in areas controlled by decision-makers in Sana'a. These include delays in movements, detention of staff and supplies, attempts to influence the selection of beneficiaries and implementing partners, and other harassment.<sup>74</sup>

**Relief Consignments-**Under Article 23 of the Fourth Geneva Convention (1949) parties to the conflict are obliged to ensure the passage of consignments of foodstuff and medicines intended for children under the age of fifteen and pregnant women.<sup>75</sup> However, even these consignments may be prevented from entering the besieged area where the military commander believes (a) that the consignments may be diverted from their destination, (b) that the control may not be effective, or (c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the

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<sup>74</sup> Report by John Ging, Director of the Coordination and Response Division, United Nations Office for the Coordination of Humanitarian Affairs 2 Aug 2018.

<sup>75</sup> Article 23, Fourth Geneva Convention (1949).

consignments for goods.<sup>76</sup> Notably this provision has been largely superseded by Article 70 Additional Protocol I, which bridges the lacuna in protection to the general population arising in the above mentioned Article 23 of the Fourth Geneva Convention and importantly is also a norm of customary international law.<sup>77</sup> Article 70 of Additional Protocol I ensures that priority is given to the distribution of relief consignments to pregnant women and children, but in addition, parties to the conflict must "allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel...even if such assistance is destined for the civilian population of the adverse Party."<sup>78</sup> Notably in *Al-Bassiouni v Prime Minister of Israel* in 2008, the Israeli High Court of Justice accepted the application of Article 70 Additional Protocol I together with Article 54 Additional Protocol I as customary international law.<sup>79</sup> Similarly, Common Article 3 to the Geneva Conventions, which is applicable in non-international armed conflict encourages parties to work on how an operation will coordinate for relief agreements. It is vital that military operations coordinators plan out relief missions including the planned food distribution to the civilian population in the area of operation. For example, in *Physicians for Human Rights et al. v. IDF Commander in Gaza* [2004], an issue arose concerning the Israeli Occupying Force obligations to supply among other things water, food, electricity and medical supplies to combat zones in Rafah in the besieged Gaza Strip. There, the Israeli High Court of Justice determined that it was an obligation to provide the food relief to the local civilians under the military commander's

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<sup>76</sup> Ibid.

<sup>77</sup> H CJ 9132/073' *Al-Bassiouni v Prime Minister et al* (2008), para. 12.

<sup>78</sup> Article 70, Additional Protocol I (1977).

<sup>79</sup> At Bassiouni (2008) supra note 65, para 12.

control, "the question of food must be part of the advance planning for a military operation".<sup>80</sup> Full responsibility lay with the Israeli Defense Forces to make plans, coordinate with, and allow assistance from international aid organizations on how the distribution of food aid would occur.

In the Yemen civil war, all sides display an inability to pause their fighting to allow for humanitarian aid into areas where there is severe malnutrition. In March 2018 the UN Security Resolution 2402 stated the Security Council is

“Gravely distressed by the continued deterioration of the devastating humanitarian situation in Yemen, expressing serious concern at all instances of hindrances to the effective delivery of humanitarian assistance, including limitations on the delivery of vital goods to the civilian population of Yemen.”<sup>81</sup>

The hindrance of aid by the all parties represents a violation of both Article 54 and Article 70 of Additional Protocol I. This will be further discussed in Chapter Four. The installation of the checkpoints and barriers to enforce a siege have prevented the free movement of civilians from the territory and the delivery of aid into the territory. The failure to ensure the delivery of relief provisions has led to the unlawful starvation and malnutrition of the besieged population, which may amount to a war crime.

Significantly, at the 8205th meeting of the Security Council, held on 15 March 2018 called on all parties to the Yemen civil war, with special emphasis on relief consignments, to:

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<sup>80</sup> HCJ 2117/01, *Physicians for Human Right et al v. I DF Commander in Gaza* [2004] para. 20.

<sup>81</sup> S/RES/2402 (2018).

- “allow and facilitate the safe, rapid and unhindered access for humanitarian supplies and personnel to all affected governorates,
- immediately facilitate access for humanitarian and commercial imports into the country and their distribution throughout in order to reach the entire civilian population,
- fully open and sustain all Yemen’s ports, including Hodeida and Saleef ports, and keep them functioning and open to all commercial and humanitarian imports, including food, fuel and medical imports,
- increase access to Sana’a Airport for lifesaving humanitarian supplies and movement of urgent humanitarian cases.”<sup>82</sup>

The Security Council reaffirmed that the denial of humanitarian access can constitute a violation of international humanitarian law.

### **Conclusion**

As discussed in this chapter, with all the laws in place, a territorial conquest of a siege, once considered the hallmark of military objectives, has lost much of its relevance in 21<sup>st</sup> century conflicts. Physical barriers no longer protect but operate either as offensive instruments or as theatrical displays to perform sovereignty.<sup>83</sup> Millions of civilians cannot be carted off to a separate area so both leaders can break the other’s will in a siege-like situation. The cramped urban areas should not be the targeting ground for enemy attack. One could even say that almost every urban and rural area is connected somehow to either the production, transportation, or sale of food for the civilian population.

The plight of the starving Yemeni people is not new. There are many cases during conflict where siege warfare, and indiscriminate attacks on civilians and their relief

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<sup>82</sup> Statement by the President of the Security Council, United Nations, S/PRST/2018/5, 15 March 2018.

<sup>83</sup> Brown, Wendy. (2010). *Walled States, Waning Sovereignty*. New York: Zone Books.

consignments were targeted. The next chapter gives two examples. Leningrad, in which over a million people died of starvation and therefore humanitarian law further constricted the violations of civilians during conflict. But with all the international humanitarian laws in place, the starvation and suffering of the Iraqi people in the First Gulf War did not lead to any legal repercussions, prosecution, or justice. Laws are only as good as those who follow them and those who can persecute the perpetrators who disregard them.

## **CHAPTER III- HISTORICAL USES OF SIEGE WARFARE, BLOCKADES, AND STARVATION**

The Geneva Conventions are the result of a process that developed in a number of stages between 1864 and 1949. It focused on the protection of civilians and those who can no longer fight in an armed conflict. As a result of World War II, all four conventions were revised, based on previous revisions and on some of the 1907 Hague Conventions, and readopted by the international community in 1949. Later conferences added provisions prohibiting certain methods of warfare and addressed issues of civil wars. The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War was adopted in 1949, due in part due to the horrifying atrocities of World War II.<sup>1</sup> Below discusses one siege where almost a million people starved to death.

### **Leningrad**

During World War II, Russia was slow in anticipating the German siege to Leningrad. The Germans kept the city of Leningrad encircled for 27 months<sup>2</sup>. As a result, the attempted evacuation of women and children came too late as the way out of the city had already been blocked<sup>3</sup>. The whole city was employed during the siege to build defenses, produce armaments, and be ready to fight if necessary. The Russian

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<sup>1</sup> Greenwood, Christopher (2008). Fleck, Dieter, ed. *The Handbook of Humanitarian Law in Armed Conflicts*. USA: Oxford University Press. pp. 27–28. ISBN 0-19-923250-4.

<sup>2</sup> Dupuy, R. E. & Dupuy, T. N. (1970) *The Encyclopedia of Military History: From 3500 BC to Present*. London: Military Book Society. 1114.

<sup>3</sup> Barber, J. & Harrison, M. (1991) *The Soviet Home Front, 1941/1945: A Social and Economic History of the USSR in World War II*. London: Longman. 66.

authorities made an effort to ensure that no one was merely a bystander<sup>4</sup>. It is unlikely that all these people actually volunteered though<sup>5</sup>. From September 1941 until December 1942, the Germans were mostly successful in stopping food and other provisions from entering the city. Food was strictly rationed in Leningrad, which had a population of 2,544,000, including 400,000 children, at the beginning of the siege<sup>6</sup>. Soldiers received higher rations than civilians, with factory workers receiving more than other workers or dependents. Estimated deaths from starvation or starvation-related causes over the course of the whole siege range between 632,000 and one million people<sup>7</sup>. Civilians were forced to stay in the city as the German commander gave the order to shoot anyone trying to leave (He was acquitted of having committed a war crime at his Nuremberg trial after the war.)<sup>8</sup> One way to justify the German attempt to starve the city into submission would be to show that everyone within the city at that time was directly involved in the war effort by their own volition, and therefore any civilians had given up their civilian status and their right of protection. Many of the citizens became involved in the war effort, but there were also many who were not, for example children, the old and the frail. According to the Geneva Conventions, the entire population should have been treated as a civilian population because there were civilians who were not involved in the war. The Germans refusal

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<sup>4</sup> Pavlov, D. V. (1965) *Leningrad 1941. The Blockade*. J.C. Adams (Trans). London: University of Chicago Press. 6-8.

<sup>5</sup> Barber and Harrison 1991: 74.

<sup>6</sup> Pavlov 1965: 48.

<sup>7</sup> Pavlov 1965: 125; Barber and Harrison 1991: 74; Collingham, Lizzie. 2012 *The Taste of War: World War II and the Battle for Food*.

<sup>8</sup> Walzer, M. (2000) *Just and Unjust Wars. A Moral Argument with Historical Illustrations*, 3rd ed. New York: Basic Books.166.

to let anybody leave Leningrad left civilians no choice but to join the campaign for survival. Many civilians wanted to leave in September 1941, but were not able to. When the 'Ice Road' was opened up in January 1942, many people left voluntarily<sup>9</sup>. The fact that civilians helped with the war effort in Leningrad is not a good enough argument to show that it was a legitimate target. Their situation was forced on them by the siege, and there was no way out for them. The civilians had to cooperate with the Russian authorities who were inside the siege area fighting to keep German troops from taking the city. From the outside, the Germans surrounded the city, and from the inside, the Russians controlled all aspects of life. It is clear that the German siege tactic did not discriminate between military and civilian targets. In fact there is some evidence that the Germans deliberately targeted the Russian authorities through the civilian population. At the same time, the large number of deaths makes a military necessity argument difficult. The Russians were not completely innocent either, as they chose to use civilians to support their war effort. They only evacuated 636,000 instead of the majority of the population. The leadership probably did not want to look like it was abandoning the whole city, a symbolism that would not be lost on the rest of the country.<sup>10</sup> Disorganization and lack of preparation meant that there was too little food stored in the city for its citizens to survive a prolonged siege. The authorities failed to disperse what food there was leaving it vulnerable to air raids, which occurred on September 8 1941 where 3,000 tons of grain went up in flames.<sup>11</sup> However, that did not negate the duty of the Germans to discriminate between military

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<sup>9</sup> Pavlov 1965: *Leningrad the Blockade*. 1941, 6.

<sup>10</sup> Moskoff, *The Bread of Affliction*, 193.

<sup>11</sup> Adamovich and Granin *A Book of the Blockade*, 47.

and civilian targets. The siege of Leningrad showed how much determination and patience was needed to starve a million city dwellers to death over 900 days. The inhabitants of the city are known to have resorted to cannibalism, and about 1,500 people, mainly young unemployed women desperate to find food for their children, were arrested for the crime.<sup>12</sup> The starvation of Leningrad ended when the siege was lifted, with the retreat of the Germans.

In the post- Nuremberg High command Trial of Field Marshal Wilhelm von Leeb, commander of Army Group North on the Eastern Front, responsible for the siege of Leningrad, prosecutors argued that von Leeb knew of the order to fire on civilians fleeing Leningrad to maintain pressure of the siege,<sup>13</sup> but the Lieber Code, which originated in April 24, 1863, also known as Instructions for the Government of Armies of the United States in the Field, General Order № 100, or Lieber Instructions, signed by President Abraham Lincoln to the Union Forces of the United States during the American Civil War that dictated how soldiers should conduct themselves in wartime<sup>14</sup> stated that

“A belligerent commander may lawfully lay siege to a place controlled by the enemy and endeavor by a process of isolation to cause its surrender. The propriety of attempting to reduce it by starvation is not questioned. Hence the cutting off of every source of sustenance from without is deemed legitimate. It is said that if the commander of a besieged place expels the non-combatants, in order to lessen the number of those who consume its stock of provisions, it is lawful though and extreme measure, to drive them back, so as to hasten the surrender.”<sup>15</sup>

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<sup>12</sup> Bidlack, ‘Survival strategies in Leningrad’, 99.

<sup>13</sup> United Nations War Crimes Commission 1949, 59.

<sup>14</sup> *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*. Washington, D.C.: Government Printing Office. 1899 Series III, Volume 3, 148-164.

<sup>15</sup> Hyde, 1945 vol 3, 1802-3.

The decision delivered stated, “We might wish the law were otherwise, but we must administer it as we find it. Consequently, we hold no criminality attaches on this charge.”<sup>16</sup>

After the Second World War, the 4<sup>th</sup> Geneva Convention was ratified, which was the first to deal with humanitarian protections for civilians in a war zone. The events of World War II showed the disastrous consequences of the absence of a convention for the protection of civilians in wartime. The Convention adopted in 1949 takes into account the occurrences of World War II. It is composed of 159 articles. It contains a short section concerning the general protection of populations against certain consequences of war. The conduct of hostilities, is later examined in the Additional Protocols of 1977. The majority of the Convention of 1949 dealt with the status and treatment of protected persons, distinguishing between foreigners in the territory of another party to the conflict and that of civilians in occupied territory. It outlines the obligations of the occupying power concerning civilian populations with detailed stipulations on humanitarian relief. There is also a specific rule set up for the treatment of civilian detainees.<sup>17</sup>

But with all the Conventions and their respective protocols conveying guidelines on civilian treatment in war, the below discussion of the First Gulf War shows that a convention, protocol, or international humanitarian law in general are only as good as an international community willing to follow them, and a court willing to prosecute those who disregard them.

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<sup>16</sup> United Nations War Crimes Commission 1949, 84.

<sup>17</sup> 4<sup>th</sup> Geneva Convention at <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> (access 21 September 2018).

## First Gulf War Iraq

The Iraqi invasion of Kuwait in early August 1990 was a bold move which sent shockwaves through the community of nations and triggered an international reaction which some have viewed as the dawn of a "New World Order."<sup>18</sup> From the start, the United Nations (the "U.N.") was at the center of the reaction against this illegal use of force, condemning the invasion the same day it occurred.<sup>19</sup> The U.N. adopted Resolution 661 in mid-August 1990, imposing a comprehensive trade embargo against Iraq and occupied Kuwait, leaving out only medical supplies and, "in humanitarian circumstances," foodstuffs.<sup>20</sup> On September 13, 1990, Resolution 666 stressed that the Council was qualified to evaluate the existence of humanitarian conditions in Iraq or Kuwait.<sup>21</sup> It entrusted the Sanctions Committee of the Security Council to "keep the situation regarding foodstuffs in Iraq and Kuwait under constant review"<sup>22</sup> and directed it to pay special attention to the needs of those persons most apt to suffer more seriously from a food shortage, "such as children under 15 years of age, expectant mothers, maternity cases, the sick and the elderly."<sup>23</sup> On September 25, the Security Council adopted Resolution 670, expanding the scope of the blockade to all transport enteties, including aircraft.<sup>24</sup> The blockade was thus in full effect, and from then on, very little food reached Iraq and occupied Kuwait. Although UN resolutions allowed food to enter

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<sup>18</sup> Provost, Rene(1992) "Starvation as a Weapon: Legal Implication of the United Nations Food Blockade against Iraq and Kuwait," 30 Column, *Journal Transnational L.* 577.

<sup>19</sup> S.C. Res. 660, U.N. Doc. S/RES/660, at 1 (1990).

<sup>20</sup> S.C. Res. 661, U.N. Doc. S/RES/661, at 2 (1990).

<sup>21</sup> S.C. Res. 666, U.N. Doc. S/RES/666, at 1 (1990).

<sup>22</sup> *Id.* Para 1.

<sup>23</sup> *Id.* Para 4.

<sup>24</sup> S.C. Res. 670, U.N. Doc. S/RES/670, at 2 (1990).

Iraq for humanitarian purposes, the first year's strict controls prevented Iraq from also raising funds, meaning that in effect the sanctions applied to food too<sup>25</sup>.

Both Iraq and Kuwait were heavily dependent on food imports before the embargo. Iraq imported about 75% to 80% of all calories consumed in the country, while Kuwait imported up to 96% of its total food consumption.<sup>26</sup> Prior to the Gulf War, the United States was a main food supplier to Iraq, but during the war the U.S. contributed troops to the coalition forces in the gulf.<sup>27</sup> In accordance with Resolution 661, all unpaid contracts for food exports to Iraq were suspended at the start of the embargo, including vital grain shipments from Australia and Canada.<sup>28</sup> The Iraqi caloric intake before the blockade consisted of "40% bread (made with wheat, 82% imported), 30% rice (82% imported), cooking oil (95% imported), and sugar (93% imported)".<sup>29</sup> Coalition military experts along with Western diplomats in Baghdad confirmed that the United Nations blockade was nearing complete efficacy, and that very few shipments moved through to Iraq or Kuwait after the beginning of August 1990.<sup>30</sup> Iraq's exports were also devastated by the blockade. Before the invasion of Kuwait, oil shipments accounted for 95% of all Iraqi exports, generating revenue of approximately ten million dollars a day. The naval blockade, as well as the decision by Turkey and Saudi Arabia to sever the oil pipelines

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<sup>25</sup> Herring, E. (2002) Between Iraq and a hard place: A critique of the British Government's case for UN economic sanctions, *Review of International Studies*, 28(1), 40.

<sup>26</sup> Epstein, Susan. (1991). *Iraq's Food and Agricultural Situation During the Embargo and the War*. 91-99. CONG. RES. SERv. REP. 26 February, at 5.

<sup>27</sup> *Ibid.* at 6-7.

<sup>28</sup> *Marching on Our Stomachs*, The Times (London), Sept. 14, 1990, *supra* note 14.

<sup>29</sup> Epstein, *supra* note 25, at 2, 5.

<sup>30</sup> *Ibid.* 29.

crossing their territories, cause a complete stoppage of Iraqi exports.<sup>31</sup> Within a few weeks after the start of the food blockade, the Iraqi government increased its control of food rationing by 30% to 40%.<sup>32</sup> The rationing imposed in Iraq rivaled that of a similar program imposed by Great Britain during the Second World War.<sup>33</sup>

By November 1990, even rationed staples were in short supply. For instance, the powdered milk rations were restricted to only children under twelve months. WHO-UNICEF reported that rations provided only half the nutritional needs of infants and a third of that of pregnant women.<sup>34</sup> By February 1991, there were little food stocks left in Kuwait; in Iraq, stocks of vegetable oil, sugar and tea were depleted. Wheat flour, rice and meat were in short supply, while fruits and vegetables were still available, but at higher prices.<sup>35</sup> Government rations in January 1991 had been reduced to 39% of pre-sanctions levels. A WHO-UNICEF mission, assessing Iraq's food needs, reported that as of mid-February 1991, shortages were affecting children under the age of five, pregnant women, and maternity cases. The report also concluded that rations sold in higher priced markets could at most offer only a minimum daily caloric needs. The mission called for the immediate shipment of infant formula, predicting outright malnutrition for one to three year-olds in the near future.<sup>36</sup> A U.N. Post-Crisis Report confirmed that stocks of the most important food staples were either critically low or had been exhausted.

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<sup>31</sup>"Hunger and the butcher's bill." *The Economist*, 8 Sept. 1990, p. 45+. *Academic OneFile*, [http://link.galegroup.com.ezproxy.mtsu.edu/apps/doc/A8847972/AONE?u=tel\\_middleten&sid=AONE&xid=5f5687fe](http://link.galegroup.com.ezproxy.mtsu.edu/apps/doc/A8847972/AONE?u=tel_middleten&sid=AONE&xid=5f5687fe). Accessed 10 Sept. 2018.

<sup>32</sup> Gertz, Bill. (1990). "Cuba, Libya Ignore Sanctions." *Washington Times*. 30 August, at A1.

<sup>33</sup> *Hunger and the Butcher's Bill*, 45.

<sup>34</sup> WHO-UNICEF, *supra* note 41, at 9; *see Lockwood, supra* note 41, at 8.

<sup>35</sup> Epstein, *supra* note 25, at 8-9.

<sup>36</sup> WHO-UNICEF, *supra* note 41, at 10-12.

“...many families cannot draw their full rations, since the distribution centres are often depleted and they have great difficulty in travelling to other centres. The quality of food distributed has itself deteriorated to the point of causing health problems.”<sup>37</sup>

Hyperinflation meant that what little food available on the market was unaffordable for most Iraqis, whose income declined or stopped altogether during the war. The air war also disrupted food distribution to civilians, particularly those who resided in more remote regions of Iraq. After the finding the existence of "severe hardship" and warning of potential widespread famine, the U.N. Post-Crisis Report "...recommends that, in these circumstances of present severe hardship and in view of the bleak prognosis, sanctions in respect of food supplies should be immediately removed as should those relating to the import of agricultural equipment and supplies. The urgent supply of basic commodities to safeguard vulnerable groups is strongly recommended. and the provision of major quantities of the following staples for the general population: milk, wheat flour, rice, sugar, vegetable oil and tea. These are required to meet minimum general requirements until the next harvest.”<sup>38</sup> A fact seeking Harvard University team also assessed that Iraq was headed for a ‘public health catastrophe’ resulting in tens of thousands of deaths by the end of 1991.<sup>39</sup>

After the fighting ended and in response to reports of various U.N. missions to Kuwait and Iraq during February and March 1991, the Security Council suspended the food

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<sup>37</sup> “U.N. Security Council, Report to the Secretary-General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-Crisis Environment by a Mission to the Area Led by Mr. Martti Ahtisaari, Under-Secretary-General for Administration and Management.” (1991) S/22366. 20 March. Para 17.

<sup>38</sup>. Ibid. Para 18.

<sup>39</sup> quoted in Herring 2002: 40.

blockade on April 3, 1991.<sup>40</sup> It should be noted though, that sanctions continued until 1996.

More than two-thirds of the countries that participated directly in the Gulf War conflict had ratified the Geneva Conventions to include Iraq and Kuwait.<sup>41</sup> Customary international law consists of unwritten rules, created by the practice of States, carried out in the belief that States are under a legal obligation to abide by them. The same rule can sometimes be found in a treaty and form part of customary law. Customary rules are binding to all States, regardless of whether the State ratified a treaty setting out the same rule. Examples of customary norms are prohibition of slavery, prohibition of torture, prohibition of genocide, and prohibition of indiscriminate attacks against the civilian population. The main advantage of customary rules is that they are binding on all States. However, while treaty rules are clear and it is easier to determine what States are bound by a particular treaty, simply by the fact of signatory evidence, it is harder to determine whether a particular rule has attained customary law status as well as its content. Norms are fundamental principles of international law, which are accepted by the international community as a customary norm from which no dissent should be permitted. This being said, there is still no clear consensus regarding precisely which norms are compelling nor how a norm reaches customary status, but it is generally accepted that a humanitarian norm includes the prohibition of genocide, maritime piracy, slaving in general, torture,

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<sup>40</sup> S.C. Res. 687, U.N. Doc. S/RES/687, at 1 (1991).

<sup>41</sup> Schindler, Dietrich. (1984). *United Nations Forces and International Humanitarian Law*. International Committee of the Red Cross. *supra* note 95, at 521.

and wars of aggression and territorial expansion.<sup>42</sup> These customary laws and norms connect all belligerents at all times, irrespective of the treaties to which they are party, including the U.N.<sup>43</sup> Therefore, only a customary prohibition of the kind found in Article 54 of Protocol I could fully extend the protection of the ban on the use of starvation as a weapon to the civilians embroiled in the Gulf conflict. The whole of Iraq and Kuwait were “besieged” by a very effective blockade. It is sometimes argued that blockades or sieges’ aims are not to starve the civilian population but to deplete the enemy’s food supplies, which are necessary to continue fighting, in order to provoke a surrender.<sup>44</sup> But realistically food shortages usually affect civilians first and combatants last, meaning that a siege or blockade will only starve civilians well before the military is affected.<sup>45</sup> Consequently, the real object of the blockade is the civilian population.<sup>46</sup> A blockade violates Article 54 as soon as it produces food shortages, because soon after there could be civilian suffering and the beginnings of malnutrition and subsequently, starvation.

The principle of proportionality “requires that there be a reasonable relationship between collateral civilian damages and concrete and direct military advantage resulting from use of the method of warfare”.<sup>47</sup> Civilian starvation raises several problems with respect to this rule. First of all, children, the sick, the elderly, and the poor are the first ones to feel the effect of food shortages.<sup>48</sup> Combatants are generally better fed than

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<sup>42</sup>International Norms and Principles Guidance Materials, at <http://www2.wpro.who.int/internet/files/eha/toolkit/web/Technical%20References/Coordination/International%20Humanitarian%20Norms%20and%20Principles.pdf> (accessed 21 September 2018)

<sup>43</sup> Schindler, *supra* note 162, at 526-27.

<sup>44</sup> Meyrowitz, Henri, Le Protocole additionnel I aux Conventions de Geneve de 1949 et le droit de la guerre maritime, 89 *Revue Generale de Droit International Public* 243, 276-77 (1985)*supra* note 50, at 278.

<sup>45</sup> Meyrowitz, *supra* note 50 at 271-272.

<sup>46</sup> Meyrowitz, *supra* note 50, at 272.

<sup>47</sup> Protocol I, *supra* note 50, arts. 51(5)(b), 57(2)(a)(iii), 57(2)(b), 1125 U.N.T.S. at 26, 29.

<sup>48</sup> U.N. POST-CRISIS REPORT, *supra* note 46, at 11.

civilians and are the last to feel hunger. Soldiers who are also not fed well, can resort to looting civilian's food stocks.<sup>49</sup> The aim of the food blockade is to undermine the enemy soldiers' will to fight by attacking the weakest on the ground, the civilians. If no civilians die, what was the point of the blockade? To achieve any noticeable impact, civilian losses must be first, a part of the war planning scenario, and second, large enough for effect. The second problem is that the overall capacity of civilian starvation to bring about some military advantage is opaque. Military advantage in a siege or food blockade is measured against the requirement that it be "direct" and "concrete."<sup>50</sup> Further doubt is cast on the proportionality of this method of warfare. In the case of the First Gulf War, no apparent military advantage appeared to be won from the food blockade against Iraq and Kuwait, despite the complete effectiveness of that blockade. When looking at the proportionality of this type of weapon, only the foreseeable impact on civilians is shown. A military commander or coalition cannot see the future as to the extent of the besieger's resistance during a siege or food blockade, and therefore cannot determine the number of civilian casualties. It is argued though that totalitarian governments such as the Nazi regime typically disregarded the needs of civilians, instead focusing on the war machine.<sup>51</sup> This argument confuses the justification for civilian starvation. Civilian starvation would be a proportionate method of warfare if the besieged surrendered immediately. Such a response seems unlikely though, whether a country be democratic, authoritarian, or rebel held. If the government is democratically elected and controlled, the war is conducted at

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<sup>49</sup> Ethiopia: 200 Days in the Death of Asmara-Starvation as a Weapon and Violation of the Humanitarian Laws of War". (1990) *Africa Watch*, 20 September.

<sup>50</sup> Protocol I, *supra* note 50, arts. 51(5)(b), 57(2)(a)(iii), 57(2)(b), 1125 U.N.T.S. at 26, 29.

<sup>51</sup> Provost, Rene, "Starvation as a Weapon: Legal Implication of the United Nations Food Blockade against Iraq and Kuwait," 30 Column, *Journal Transnational*. 577 1992.

the will of the people, who will therefore accept its consequences. On the other hand, a more totalitarian regime, having imposed a war on its people without consent, will probably not shy away from imposing on them the consequences of its unilateral decision. This type of government utilizes the blockade to hide the malicious intent to decimate their own marginalized population, children, and the ill under the auspices of enemy attack.<sup>52</sup> Far from supporting the use of a blockade against a population under totalitarian rule, the population's lack of consent to both its government and the war counts against making it the object of a food blockade. A food blockade would be more justifiable in a democratic regime because the decision to go to war would have been voted on by the people, therefore all should share in the consequences of a possible blockade. In reality though, the argument to starve a civilian population seems fallacious for any system of rule.

Once the besieged government, whatever its form, has accepted civilian losses, the starvation weapon produces no military advantage to speak of, since the enemy's capacity to fight is only minimally affected. Such a reaction appears to have occurred in many cases of civilian starvation, including the First Gulf War.<sup>53</sup> As thoughtfully stated by one commentator, "the civilian population during a food blockade is the passive common element of two variable legal and social equations: (i) how directly the blockade is aimed at the civilian population, and (ii) what kind of relation exists between the population and its government."<sup>54</sup>

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<sup>52</sup> Baggaley, John. (1990). "U.S. Vows No Compromise; Food Fears Shake Iraq Trade Ban." *Reuters*, 7 September.

<sup>53</sup> Iraq responded to the blockade by saying it would never cause its retreat from Kuwait, "even if we have to eat mud." *Hunger and the Butcher's Bill*, *supra* note 38.

<sup>54</sup> Meyrowitz, *supra* note 50, at 272-274.

Studies after the Gulf War, found a doubling of child mortality due to the havoc caused by the First Gulf War, the international sanctions regime, and the policies of Saddam Hussein. There is controversy as to how many people died as a result though. Iraq claimed 1.5 million, but researchers gave a lower estimate of 500,000 (later retracted by unsound methods of calculations).<sup>55</sup> At the end of the 1990's, two careful studies indicated that child-death rates more than doubled after the First Gulf War, with an early peak in the immediate aftermath of the war and a second peak as sanctions continued between 1991-1996, impacting unevenly across the country. Malnutrition was a major contributing factor. Somewhere between 166,000 and 300,000 children died between the above years.<sup>56</sup> The number of people, civilian and military, that died in the direct military action was estimated at 40,000<sup>57</sup>.

It is difficult, therefore, to see the blockade and sanctions as more humane than direct military attacks. The argument in defense of sanctions is that they are more humane than direct military attacks. But although it can be argued that sanctions were intended to bring only hardship, and military detriment, not death, to invoke the desired result, the blockade and sanctions could not distinguish fully between the civilian population and the army, and also between the few civilians who were financially stable and the larger population, who were poor and completely unable to handle the economic climate they were subjected to. This is contrary to the principles

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<sup>55</sup> Baram, Amatzia, (2000). "The Effects of Iraqi Sanctions: Statistical Pitfalls and Responsibilities." *Middle East Journal* 54: 194-223.

<sup>56</sup> Garfield, Richard. (1999a). *Morbidity and Mortality among Iraqi Children from 1990 to 1998: Assessing the Impact of Economic Sanctions*. Goshen, Indiana: Institute for International Peace Studies, University of Notre Dame and the fourth Freedom Forum.

<sup>57</sup> Gordon, J. (1999) Economic sanctions, just war doctrine, and the 'fearful spectacle of the civilian dead', *Cross Currents*, 49(3), 387.

of the Geneva Conventions, and the result was not just hardship but starvation. Not only did sanctions fail to differentiate between military and civilian targets in regards to food deprivation, but civilians seemed to me the intended target, being used to influence Saddam Hussein. Although one could argue that the intention was better than outright cluster bombs or complete disregard to civilian casualties by direct hostilities, it is not enough to override the fact that civilians were targeted directly in a covert tactic that would only work in the long term. Although direct attacks may be more shocking to the outside world, and bring immediate suffering, at least they can be targeted more directly towards the military. Sanctioning food is not a legitimate tactic as it rarely achieves its effect on enemy forces. The whole population of a country is affected. It would also not be acceptable to expect civilians to move out of the targeted area, as this would create a massive refugee problem. Therefore, those most “under siege” during the First Gulf War seemed to be the children; the future of Iraq. Then U.S. Secretary of State Madeleine Albright was asked about her opinion on the report that half a million children died possibly due to the food blockade. She said, “I think this is a very hard choice, but the price, we think the price is worth it,”<sup>58</sup> She later regretted making the statement.

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<sup>58</sup> CBS News. (1996). Madeline Albright (accessed 14 September 2018)

## Conclusion

At the Rome Conference in 1998, there was a single attempt to make economic embargos a crime against humanity. The Cuban delegate Dr. Jose Peraza Chapeau proposed that

“other inhumane acts should include ‘economic, financial and commercial blockades intentionally causing great suffering or seriously injuring physical integrity or mental or physical health, and that ‘extermination should include ‘the infliction of conditions of life, inter alia, deprivation of access to foodstuff and medicines, calculated to bring about the destruction of a population’”.<sup>59</sup>

He did not receive support for passage. It should be noted that during the negotiations over international sanctions against Iraq, the U.S. government defended its policy that was reported to have caused the deaths of hundreds of thousands of Iraqi children. It is not by chance that great powers will have an unwillingness to legislate against blockades and starvation. Additionally, one would think that the transparency brought through internet access and modern media in general, would engender the masses to cry out more when these types of human rights violations occur.

As discussed in this chapter, the atrocities of WWII gave rise to increased attention of civilians in war and their rights. The international community holds humanitarian law in high regard, but as we have seen in the First Gulf War, and as we will see in the next chapter, the outcry for violations to said laws is minimal and seems to only be from the media, the United Nations to a point, and humanitarian organizations.

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<sup>59</sup> United Nations 2002b, 240 and 242.

## **CHAPTER IV- YEMEN- THE FORGOTTEN CRISIS**

As stated in Chapter One, almost three years of fighting in Yemen appears to have imbedded all parties into deepening “sides”, while three UN-organized efforts to negotiate a peace deal have failed. There are now weekly new briefs on the increasing levels of malnutrition of the population especially the most vulnerable, the children. This chapter will explain, in detail, the actual condition of the population, the most pertinent evidence showing how all parties to this conflict have disregarded humanitarian law, the multiple UN resolutions requesting a cease fire, and some international community’s pleas for a halt to the violence. Lastly, looking at the evidence and the applicability of the law in a non-international conflict, what, if any, does the future hold for the Yemeni people? Will there be justice after the war ends?

### **Conditions of Civilians over the Civil War Period**

Since the beginning of the civil war, it is reported that more than 3 million people have been forced to leave their country.<sup>1</sup> Human Rights Watch accuses both sides, the Houthis and the Yemeni government, of unlawful actions in war. The situation is so frenzied that Ronald Kremer from Doctors Without Borders stated that people in particular areas can not afford to buy any food because they now pay three times more for food. With this there is also no money left for health expenditures, which would be needed to help those people needing medical care due to health related issues like malnutrition. Kremer also stated that even people who have money for healthcare are afraid to go to hospitals because they are the targets of attacks. It is also difficult to arrive

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<sup>1</sup> <http://www.worldbank.org/en/country/yemen/overview>.

in hospitals because an absence of public transportation. Approximately a quarter of the 4,000 hospitals are not able to offer healthcare services. Of these, 90% have been partially or completely destroyed by the attacks. More than 19 million people in the country have no access to fresh water and hygiene facilities. As an outcome, nearly 2.5 million children have the risk of diarrheal diseases.<sup>2</sup> The ongoing economic crisis is

### Two in three Yemenis do not know where their next meal will come from

Humanitarian needs across Yemen continue to increase, fuelled by ongoing conflict that has collapsed the economy, crippled social services and severely disrupted livelihoods. With more than 17 million – two in three people – not knowing where their next meal will come from, Yemen is the world's largest humanitarian crisis. According to the [2018 Humanitarian Needs Overview \(HNO\)](#), an estimated 22.2 million people, equivalent to 75 per cent of the population, are in need of some kind of humanitarian or protection assistance, including 11.3 million who are in acute need - an increase of more than one million people since June 2017. The most severe needs are in areas of ongoing conflict or areas with large numbers of IDPs and returnees.

#### Yemeni districts at highest risk of famine



Sources: FSAC, Nutrition, WASH and Health Clusters (Oct 2017)

Some 8.4 million people are severely food insecure and at risk of starvation; a 24 per cent increase since 2017. Some 7.5 million people need nutrition assistance including 1.8 million children and 1.1 million pregnant or lactating women who are acutely malnourished. Five governorates (Al Hudaydah, Lahj, Taizz, Abyan and Hadramaut) have acute malnutrition rates above the emergency threshold set by the World Health Organisation of 15 per cent. Purchasing power and social safety nets for millions of people have been eroded as more than 1.25 million public servants have not been regularly paid their salaries for over a year.

**Figure 2- Nutrition Activities in Yemen<sup>3</sup>**

<sup>2</sup> OCHA Humanitarian bulletin, Issue 30, 28 January 2018; [https://reliefweb.int/sites/reliefweb.int/files/resources/Hum%20bulletin%20-%20Issue%2030\\_%20January2018\\_FINAL.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Hum%20bulletin%20-%20Issue%2030_%20January2018_FINAL.pdf) (accessed 11 September 2018)

<sup>3</sup>. 'Nutrition Activities in Yemen', *WPF* June 2017 (Accessed 25 AUG 2018).

leading to some social disasters as well, such as child marriage. Reports show that child marriage rates are rising due to the economic crisis<sup>4</sup>.

As shown in Figure 2, at least 22 million Yemenis, out of total population of 27 million, need humanitarian assistance. More than 15 million people are in need of basic health-care accession and more than 1.8 million children younger than 5 years are at risk of diseases<sup>5</sup>. In reference to the countries spiraling economic downturn, in 2014 the GDP was US\$ 43.2 B<sup>6</sup>. In 2015 the GDP was US\$34.6B<sup>7</sup>, and the GDP growth (annual percentage) was -13.8%.<sup>8</sup> As of the most current World Bank data of 2016, the GDP was US\$18.2B, and the GDP growth (annual percentage) was -34.4%.<sup>9</sup> The Yemeni ministry of planning and cooperation stated that real GDP per capita decreased by 35% in 2015 to nearly \$320<sup>10</sup>. Since July 2016, the World Bank, through its concessional arm the International Development Association (IDA) has financed \$1.3 billion in emergency interventions, investing in human and institutional assets and to prepare for recovery and reconstruction.<sup>11</sup>

With up to 67% of children under five years chronically malnourished (stunted), and rates of acute malnutrition (wasting) exceeding 25% in some governorates, the physical and mental development of Yemeni children is severely at risk, a disadvantage from which they cannot recover if appropriate actions are not undertaken in the critical period

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<sup>4</sup> Zayed&Smith, 2016.

<sup>5</sup> Burki, Talha. (2016). "Yemen's Neglected Health and Humanitarian Crisis." *The Lancet* 20-26 February. 387.10020 734-35.

<sup>6</sup> 2016 World Bank, World Development Indicators.

<sup>7</sup> 2016 World Bank, World Development Indicators.

<sup>8</sup> . <https://www.cia.gov/library/publications/the-world-factbook/geos/ym.html> (accessed 11 September 2018).

<sup>9</sup> 2016 World Bank, World Development Indicators.

<sup>10</sup> Zayed&Smith, 2016.

<sup>11</sup> <http://www.worldbank.org/en/country/yemen/overview/strategy>.

from conception to the first two years of life. As explained in Chapter 2, stunting, which is the result of chronic or recurring undernutrition, holds children back from reaching their physical and cognitive potential. Childhood stunting is one of the most significant impairments to human development, globally affecting approximately 162 million children under the age of 5 years. Stunting has long-term effects on individuals and societies, including: diminished cognitive and physical development, reduced productive capacity and poor health, and an increased risk of degenerative diseases.<sup>12</sup> The nutrition situation for women of reproductive age (15 to 49 years) is equally serious: 25% are underweight and more than four-fifths are anemic, which can lead to maternal death and disabling morbidities. The nutrition crisis in Yemen is multi-faceted, originating in conflict, food insecurity and poverty and resulting in inadequate growth and ill-health for millions of children. In addition to poor food consumption, factors contributing to these critical levels of undernutrition are poor infant and young child feeding and care practices. As mentioned earlier, an estimated 14.8 million people lack access to basic healthcare and the health facilities surveyed by the WHO in November 2016 faced severe shortages of medicine, equipment and staff.<sup>13</sup>

From March 2015 to June 2018, there were at least 16,706 civilian casualties, with 6,475 killed and 10,231 injured in the conflict; however, the real figure is likely to be significantly higher.<sup>14</sup> Saudi-led coalition air strikes were the leading cause of overall civilian casualties. According to the UN Human Rights Council, civilians have repeatedly

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<sup>12</sup> [http://www.who.int/nutrition/publications/globaltargets2025\\_policybrief\\_stunting/en](http://www.who.int/nutrition/publications/globaltargets2025_policybrief_stunting/en).

<sup>13</sup> 'Nutrition Activities in Yemen', *WPF* June 2017 (Accessed 25 AUG 2018).

<sup>14</sup> Human Rights Council, Thirty-ninth session, 10–28 September 2018, Agenda items 2 and 10, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General.

been the victims of "unrelenting violations of international humanitarian law". Medics have struggled to cope with the world's largest cholera outbreak, which has resulted in more than 1 million suspected cases and 2,248 associated deaths since April 2017. What happens in Yemen can greatly exacerbate regional tensions. It also worries the West because of the threat of attacks emanating from the country as it becomes more unstable.<sup>15</sup>

### **Impact on Food Access**

Devastated by years of conflict, Yemen is only more reliant on imports now. The need cannot be met by humanitarian aid alone. Meanwhile, the capacity of Hudaydah port, where the majority of imports historically arrived and more than half of food milling and storage capacity is located, has been deleteriously affected by coalition airstrikes. Even so, during the conflict the port has remained critically important, with some 70 per cent of all imports entering the country through Hudaydah.<sup>16</sup> Total imports of staple foods, though they declined at various periods during the conflict, had overall been sufficient to meet most of Yemen's needs, at least prior to the November 2017 blockade. The problem has been the price of food rather than its availability.

Prices have risen due to the increased costs of getting food to the markets. While this is in part due to prevailing insecurity, damaged infrastructure and additional taxation within Yemen, nearly all involved in trade credit the primary cause of price increases to the coalition's restrictions on naval imports. Every day that vessels are delayed, shippers receive late fees, up to tens of thousands of dollars per day. The high costs of delays, as

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<sup>15</sup> "Yemen Crisis: Who is fighting Whom?", *BBC News*, 30 January 2018, <https://www.bbc.co.uk/news/world-middle-east-29319423> (accessed 10 September 2018).

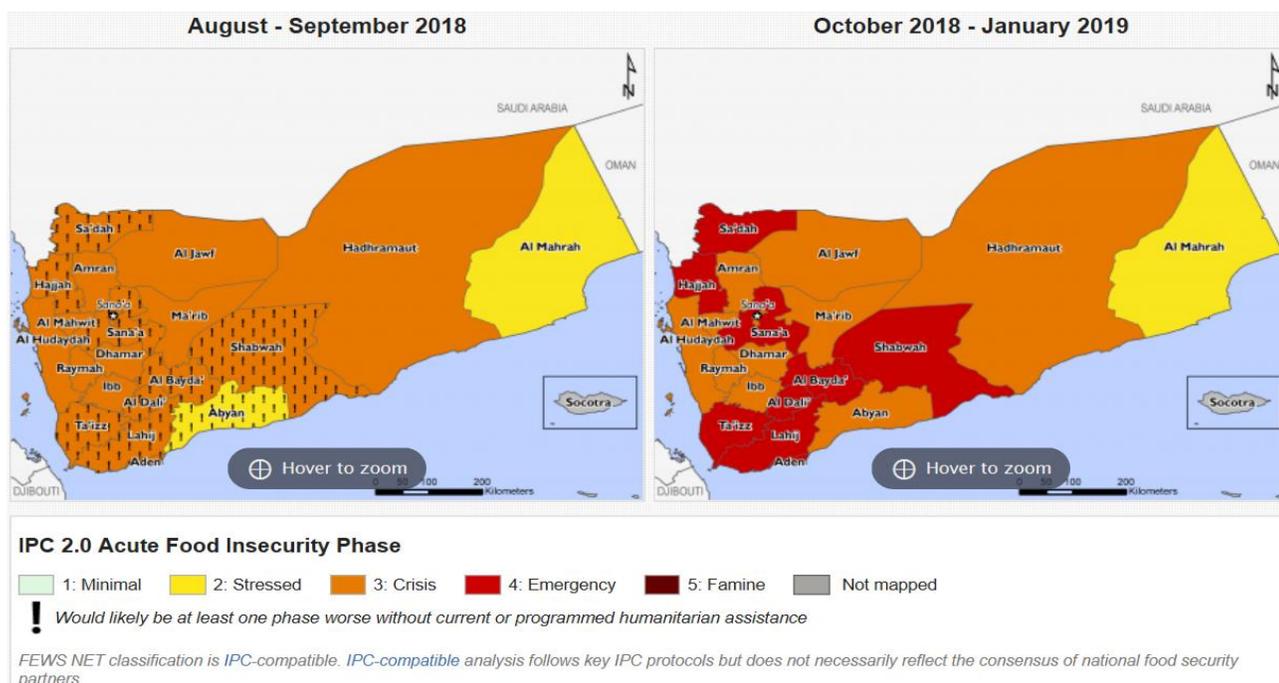
<sup>16</sup>[https://logcluster.org/sites/default/files/logistics\\_cluster\\_yemenhodeidahcontingencyplan\\_170322\\_0.pdf](https://logcluster.org/sites/default/files/logistics_cluster_yemenhodeidahcontingencyplan_170322_0.pdf).

well as the unpredictability of delays and clearance, lead to inflated food prices.

Meanwhile, most Yemenis have suffered a loss of income due to the conflict, including the non-payment of salaries by the Central Bank of Yemen. The effects of the price increases coupled with an erosion of purchasing power have therefore been catastrophic on the population. While supply is insufficient and the extreme unpredictability of the restrictions drives prices higher, fewer people are able to afford food and more people go hungry.

As seen in Figure 3 the Famine Early Warning Systems Network (FEWS) large populations in Yemen continue to face Crisis (IPC Phase 3) or Emergency (IPC Phase 4) levels of acute food insecurity. In a worst-case scenario, significant declines in commercial imports and conflict that cuts populations off from trade and humanitarian assistance for an extended period of time could drive food security outcomes in line with Famine (IPC Phase 5). Of serious concern are increasing clashes in and around Al Hudaydah. There is now the concern that key infrastructure may become damaged and/or that staple food imports and trade may become disrupted. Mills operated by the Sea Silos Company have restricted access, there was damage to a World Food Program food warehouse, and the main road between Al Hudaydah and Sana'a City is closed, adding to the concerns. The Yemeni Rial depreciated on the informal market in August and September 2018, reaching 596 YER/USD in September 2018 compared to 496 YER/USD in July 2018. Wheat flour prices have increased in September, following the recent currency depreciation as well as the closure of the main trade route between Al Hudaydah and Sana'a City. Across most markets in Yemen, wheat flour prices increased by approximately 20 percent between August and September. Nearly the whole of the

country is expected to remain in Crisis (IPC Phase 3) or Emergency (IPC Phase 4) amidst the ongoing conflict. Humanitarian assistance continues to play a major role in helping to protect food consumption for approximately one-third of Yemen's population each month.<sup>17</sup>



**Figure 3- Current and Future Projections of Food insecurity in Yemen**

To reiterate, humanitarian aid has not been able to fill the gap. While food requirements were generally being met prior to the November 2017 blockade, fuel imports have generally been insufficient throughout the conflict. This was exacerbated in June 2017 when the Government closed Ras Isa port, which primarily accommodated fuel. The legacy of the November 2017 blockade and the ongoing restrictions imposed on

<sup>17</sup> [Famine Early Warning Systems Network. \(2018\). "Yemen Food Security Outlook." At http://fewsn.net/east-africa/yemen \(accessed 20 September 2018\).](http://fewsn.net/east-africa/yemen)

vessels to the Red Sea ports have resulted in a decrease in requests to enter. From March through June 2018, requests had fallen 50–66 per cent compared to before the November 2017 blockade.

Statistics continue to show clearly that the condition of the Yemeni people is a humanitarian nightmare. Currently weekly news stories and investigative reporting of Non-Governmental Organizations produce more proof of the increasing level of starvation. Below are additional concrete evidentiary situations that continue to show how the Yemeni people are terrorized in areas where they would access food, or seek medical attention due to the lack of food.

#### **Additional Evidence**

According to Amnesty International it is evident that all of the contributing parties to the Yemen conflict are in violation of international humanitarian law, including war crimes, in addition to serious human rights offenses. Across the various governorates (Sana'a, Sa'da, Hajjah, Hodeidah, Ta'iz, and Lahj), 36 documented airstrikes of the Saudi led coalition appear to be in violation of international humanitarian law (what is often referred to as "laws of war"), with a death toll of 513 civilians (minimum of 157 children) and 379 injuries. The attacks in question appear to have deliberately targeted civilian agencies, such as schools, hospitals, mosques and public markets, qualifying them as war crimes. Furthermore, the use of cluster munitions by the Saudi led coalition is in direct violation of international law as they are classified as a banned weapon due to their imprecise and often times delayed detonation. The munitions in question were

identified by Amnesty international to have been produced using US, UK and Brazilian manufactured models and had been frequently used in residential areas.<sup>18</sup>

In addition to the airstrikes, Amnesty International also investigated 30 ground attacks in which no distinction between civilians or combatants were made, resulting in 68 civilian casualties, the majority of which were women and children. Both pro and anti-Houthi forces have made use of other imprecise weapons including mortars, artillery, and Grad rockets in high civilian population areas amidst homes, schools and hospitals. Again, these strikes are in direct violation of international humanitarian law, possibly qualifying as war crimes. It has also been reported that hospital staff in Ta'iz were targeted by the anti-Houthi forces (pro President Hadi and coalition) using intimidation and harassment tactics while staging military positions near the installation, endangering the civilian population as a means to thwart would be attacks.<sup>19</sup> Hospitals are related to food security in that people can receive glucose IVs is they come in dehydrated or are unable to eat.

A report from the New York Times in a June 2017 cited that an assurance was made by the Saudi government to the US that new, stricter rules of engagement to assess civilian endangerment whilst targeting would be implemented.<sup>20</sup> Such assurances preceded a \$110B arms sale from the US. Following that sale, six separate airstrikes by the coalition, as identified by Human Rights Watch, appear to have violated the laws of

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<sup>18</sup> "Yemen: Three Years on, US and UK Arms Supplies to Saudi-led Coalition are Devastating Civilian Lives", 22 March 2018 at <https://www.amnestyusa.org/press-releases/yemen-three-years-on-us-and-uk-arms-supplies-to-saudi-arabia-led-coalition-are-devastating-civilian-lives/> (accessed 13 September 2018).

<sup>19</sup>Ibid.

<sup>20</sup> Schmitt, Eric. "Saudi Arabia Tries to Ease Concerns Over Civilian Deaths in Yemen," *New York Times*, June 14, 2017, <https://www.nytimes.com/2017/06/14/world/middleeast/saudi-arabia-arms-training-yemen.html?mcubz=1> (accessed 11 September 2018).

war, resulting in 55 civilian deaths (33 children) and dozens of injured.<sup>21</sup> The assurance made to minimize civilian casualties and harm have yielded no change, as unlawful airstrikes have continued to the present.

Overseeing these operations, Joint Incidents Assessment Team (JIAT) (the coalition in 2016 comprised of Saudi Arabia, UAE, Bahrain, Kuwait, Egypt, Jordan, Morocco, Sudan and Qatar) was mandated to investigate, report and provide recommendations for all “claims and accidents” during operations in Yemen. On March 15, 2016, an attack was made on the Mastaba Market in Hajjah. It was the conclusion of JIAT that the attack complied with the laws of war, stating it had been “based on solid intelligence that a large gathering of Houthi armed militia (recruits), and that the gatherings were near a weekly market, which does not have any activity except on Thursdays.”<sup>22</sup> The attack was made on a Tuesday. Both Human Rights Watch (conducting an on-site investigation March 28<sup>th</sup>, 2016) and a team of UN investigators arriving the following day yielded conflicting information with that of the Joint Incidents Assessment Team’s report of no civilian casualties. Twenty three civilians who had witnessed the airstrikes, as well as staff from two area medical facilities that treated the wounded from these attacks<sup>23</sup> were interviewed by the Human Rights Watch and the UN team concluded that at least 97 civilians were killed (25 of which were children).<sup>24</sup> The intended target of the attacks had only taken 10

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<sup>22</sup> “Joint Incidents Assessment Team (JIAT) on Yemen Responds to Claims on Coalition Forces' Violations in Decisive Storm Operations,” *Saudi Press Agency*, August 5, 2016, <https://www.spa.gov.sa/viewstory.php?lang=en&newsid=1524799> (accessed 11 September 2018).

<sup>23</sup> “Yemen: US-Bombs Used in Deadliest Market Strike,” *Human Rights Watch* news release, April 7, 2016, <https://www.hrw.org/news/2016/04/07/yemen-us-bombs-used-deadliest-market-strike>.

<sup>24</sup> “Yemen: MSF treats more than 40 wounded following deadly airstrike on marketplace,” Médecins Sans Frontières (MSF, or Doctors Without Borders) project update, March 16, 2016, <http://www.msf.org/article/yemen-msf-treats-more-40-woundedfollowing-deadly-airstrike-marketplace> (accessed 11 September, 2018).

casualties, hitting a checkpoint approximately 250 meters north of the market, manned by 2 or 3 Houthi soldiers. Additionally, the local populous also reported that the market in question was not open weekly on Thursdays only, but open daily. Carrying out the attacks on this surveilled site would strongly suggest the coalition's use of indiscriminate fire would result in a disproportionate loss of civilian life, violating the laws of war and continuing the issue of food insecurity because markets are where civilians purchase their food. If Houthi fighters had been utilizing a building within the market to house fighters that would implicate them as violating the laws of war as well, for failing to protect civilians under their control from effects of possible attack. However, even in that case, the airstrikes could not have been justified as they had been executed by the coalition. Gen. Ahmad al-Assiri, then spokesman of the coalition stated on March 16, that the attack was targeting "a militia gathering" and the area was a place for buying and selling, indicating the coalition's knowledge of the targeted site being a civilian commercial area.<sup>25</sup> This is unlawful conduct in war and should have resulted in a formal investigation of war crimes in addition to providing redress for the civilian victims.

The United Nations Human Rights Council passed resolution number 36/31 in September 2017 to establish a Group of Eminent Experts (GEE) comprised of regional and international experts in human rights law as it applies to the Yemen civil war.<sup>26</sup> Three independent experts were appointed in December 2017 and began their review in February 2018 to investigate violations and abuses by all parties involved from

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<sup>25</sup>"Yemen market strike killed 119 in one of war's deadliest attacks: UN," *Middle East Eye*, March 17, 2016, <http://www.middleeasteye.net/news/yemen-market-strike-killed-119-people-one-wars-deadliest-attacks-556556385> (accessed 11 September, 2018).

<sup>26</sup> A/HRC/RES/36/31, Human rights, technical assistance and capacity-building in Yemen. UN Human Rights Council, 3 October 2017.

September 2014 through June 2018, and to identify persons responsible. Six investigative missions, from March through May 2018 visited the governorates of Hodeidah, Sa'da, Sana'a, and Aden and reported their findings to the UN High Commissioner.<sup>27</sup>

The GEE reviewed 11 incidents where air strikes hit marketplaces. The significance of these findings ties into the fact that these areas are where civilians gather to get needed food for themselves or their families and also go and received medical attention.

- 15 March 2016, coalition air strikes on Khamees market in the Mastaba district, Hajjah Governorate killed more than 100 civilians. Since the establishment of the Group's mandate, at least five markets have been struck.<sup>28</sup>
- 26 December 2017 air strikes on the Mahsees Market in Ta'izz Governorate, which killed at least 36 male civilians and injured another 46.<sup>29</sup>
- 11 air strikes hitting civilian boats off the shores of Hudaydah from November 2015 until May 2018, of which 9 were reviewed and 2 investigated by the Group of Experts, approximately 40 fishermen were killed or disappeared.<sup>30</sup>
- 17 March 2017, coalition aircraft targeted a boat carrying refugees. A total of 32 Somali refugees, including 11 Somali women, and 1 Yemeni civilian were killed, and another 10 persons were reported missing.<sup>31</sup>

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<sup>27</sup> <https://www.amnesty.org/en/latest/news/2018/08/yemen-scathing-un-report-underscores-need-for-arms-embargo-tougher-scrutiny/> (accessed 10 September 2018).

<sup>28</sup> Report of the United Nations High Commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and a summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry\*, Advanced Edited Addition, Distr.: General, 17 August 2018A/HRC/39/43. 36.

<sup>29</sup> Ibid, 40.

<sup>30</sup> Ibid, 6.

<sup>31</sup> Ibid, 6.

- 2 December 2015, Air strikes damaged facilities operated by Médecins sans frontières, including a clinic in the Houban district of the Ta'izz Governorate<sup>32</sup>
- 21 January 2016, an ambulance was struck in the Sa'dah Governorate<sup>33</sup>
- 15 August 2016, a hospital in the Abs district of the Hajjah Governorate was hit. All the locations of the Médecins sans frontières facilities had been shared with the coalition and the ambulance was clearly marked.<sup>34</sup>
- 11 June 2018, Médecins sans frontières reported that an air strike had hit a new cholera treatment center in the Abs district of Hajjah Governorate. It indicated that the coordinates of the facility had been shared with the coalition on 12 separate occasions.<sup>35</sup>

In reference to a civilians access to food of the ability to evacuate an enemy held area, from approximately March 2015 until March 2016, the Houthi-Saleh forces controlled the two main entry points into Ta'izz, one on the west side of the city and one on the east. From March to July 2015, there were continuous armed clashes between these forces and local armed groups within the city. Checkpoint commanders only permitted civilians to leave the city without their personal belongings. Civilians could only enter the city on foot and much of their food and medicine was confiscated or looted at checkpoints. Trucks carrying humanitarian supplies were subject to substantial delays and other interference. Consequently, suppliers of humanitarian and commercial goods began using

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<sup>32</sup> Ibid, 6.

<sup>33</sup> Ibid, 6.

<sup>34</sup> Ibid, 6.

<sup>35</sup> Ibid, 6.

an unpaved mountainous route south of the city to deliver essential supplies. Trips from Ibb or Aden took many hours longer using the southern route.

On 9 August 2016, the coalition closed Sana'a International Airport to commercial traffic. This prevents thousands of Yemenis from seeking medical care abroad. In the meantime, the health-care system in Yemen has disintegrated. Those who are chronically ill and need to leave the country must use alternative routes that require long treks across active front lines at high risk and at high costs. For example, on 31 August 2017, the founder of the Yemen Red Crescent Society died because he could not obtain the life-saving treatment he needed in Yemen and could not travel abroad for such treatment. Since August 2016, only United Nations and humanitarian flights were permitted at Sana'a International Airport, and during the November 2017 blockade even those were halted for more than three weeks.<sup>36</sup>

Prior to August 2016, commercial flights to Yemen were required to stop in Saudi Arabia for inspection. The coalition has not explained the necessity of closing the airport completely, including to those seeking immediate medical treatment abroad. The effective closure of Sana'a airport is a violation of international humanitarian law protections for the sick and wounded. On 6 November 2017, in response to missiles fired at Saudi Arabia by Houthi forces, the coalition imposed a total blockade on all the borders of Yemen, preventing all humanitarian aid and commercial trade, including food and fuel, from entering the country. After the coalition announced that it would allow urgent humanitarian and relief materials to enter, the first shipments of food reached

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<sup>36</sup> Ibid, 9.

Hudaydah on 26 November. The first vessel containing fuel entered on 22 December. In April 2018, the coalition announced that all ports were reopened; however, as of June 2018, restrictions remain.<sup>37</sup> The arbitrary nature of restrictions, compounded by the November blockade, has had a negative effect on commercial shipping. The impact of these developments on the civilian population has been immeasurable. The accessibility of food and fuel has significantly declined, due to increased costs of bringing goods to markets. These costs have been passed down to shoppers, reducing the few limited goods available completely unaffordable for the majority of the population. The problem has been exacerbated by the Government's non-payment of public sector salaries, affecting one quarter of the population, since August 2016.<sup>38</sup> The harm to the civilian population caused by severely restricting naval imports was foreseeable, given the country's pre-conflict reliance on imports.

As of April 2018, nearly 17.8 million people were food insecure and 8.4 million were on the brink of famine. Health-care facilities were not functioning, clean water was less accessible and Yemen was still suffering from the largest outbreak of cholera in recent history. And as of 18 September 2018, according to Save the Children, a total of 5.2 million children now face famine. As the city of Hodeidah experiences renewed fighting, there is a real risk its port, which is a vital hub for goods and aid for 80% of Yemen's population, could be damaged or temporarily closed, reducing the waning supply of available of food and fuel as well as driving up prices even further. Hundreds of

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<sup>37</sup> Ibid, 30.

<sup>38</sup> Ibid, 5.

thousands of children would be in immediate danger of starvation while millions more are at risk of famine.<sup>39</sup>

Of greatest significance from the United Nations Group of Experts 41 page report are the statements that

- “Individuals in the Government of Yemen and the coalition, including Saudi Arabia and the United Arab Emirates, and in the de facto authorities have committed acts that may, subject to determinations by an independent and competent court, amount to international crimes.<sup>40</sup>
- And, in the statement from Kamel Jendoubi, the chairman of the UN Group of Experts in their 41 page report on Yemen. He said, “I call in the Government of Yemen to investigate and prosecute violations that amounts to crimes by their nationals and armed forces.”

From the evidence above, let us now revisit Chapter Two’s legal framework notes in reference to future prosecution. International Humanitarian Law is quite clear in reference to the laws of war when civilians are present.

### **Legal Framework Notes**

- Yemen is a State party to 9 of the 13 core International Human Rights (IHR) treaties, which remain applicable in periods of armed conflict. The Government retains positive obligations in areas where it has lost effective control. Saudi Arabia is State party to 7 of the 13 core IHR treaties. Saudi Arabia is not party to the International Covenant on Economic, Social and Cultural Rights, International Convention for the Suppression of Terrorist Bombing, and the Convention on the

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<sup>39</sup> <https://www.savethechildren.org/us/about-us/media-and-news/2018-press-releases/yemen-additional-one-million-children-risk-of-famine> (accessed 20 September 2018).

<sup>40</sup> UN Experts: Possible War Crimes in Yemen, 28 August 2018 at <https://www.albawaba.com/news/un-experts-possible-war-crimes-yemen-1178464> (accessed 20 September 2018).

Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.<sup>41</sup>

- Saudi Arabia is not a party to the Rome Statute of the International Criminal Court. However, many of the Rome Statute's provisions reflect customary international law.<sup>42</sup>
- The International Criminal Court (ICC) is a permanent court with a mandate to investigate, charge, and prosecute people suspected of genocide, crimes against humanity, and war crimes. However, it can only exercise jurisdiction over these crimes if:
  1. The crimes occurred in the territory of a country that is a member of the court;
  2. The suspect charged is a citizen of the country that is an ICC member;
  3. A country not party to the ICC treaty accepts the court's authority for the crimes in question through formal declaration to the court;
  4. The United Nations Security Council refers the situation to the ICC prosecutor.
- Yemen is not a state party to the Rome Statute, the ICC treaty. Therefore, in the absence of the Yemeni government ratifying the statute, or accepting the jurisdiction of the court through a declaration, the ICC could only obtain jurisdiction over crimes in Yemen if the UN Security Council refers the situation there to the ICC. Jordan, a member of the Saudi-led Coalition, is a state party to

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<sup>41</sup> <http://hrlibrary.umn.edu/research/ratification-saudikingdom.html>.

<sup>42</sup> Report of the United Nations High Commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and a summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry\*, Advanced Edited Addition, Distr.: General, 17 August 2018/A/HRC/39/43, pg 4 17 August 2018.

the ICC, so it is possible that Jordanian citizens implicated in serious crimes could be tried under the ICC.<sup>43</sup>

### **The Crime of Starvation**

If the UN requests that crimes committed during the Yemeni War be transferred to the International Criminal Court for prosecution, Article 54 of Additional Protocol I is applicable. For non-international conflict, which is the current state of the Yemeni Civil War, Article 14 of Additional Protocol II would apply. Both articles contain a customary international law prohibiting the starvation of the civilian population, thus prohibiting total warfare.<sup>44</sup>

To reiterate again, The United Nations Security Council would need to refer the situation in Yemen to the International Criminal Court (ICC) prosecutor. Yemen is not a state party to the Rome Statute, which is an ICC treaty. Therefore, in the absence of the Yemeni government ratifying the statute, or accepting the jurisdiction of the court through a declaration, the ICC could only obtain jurisdiction over crimes in Yemen if the UN Security Council refers the situation there to the court. If this were to happen, and this writer believes that the more evidentiary findings accumulate, it will, the starvation of the civilian population will be considered a war crime. Article 8(2)(b)(xxv) of the Rome Statute provides for the war crime of "intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva

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<sup>43</sup> <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

<sup>44</sup> Article 54, Additional Protocol 1 (1977); D. Butler, 'Enforced Starvation: Exploring Individual Criminal Responsibility for State-Induced Famines' section 4 at <https://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2007/enforcedstarvation.pdf> (accessed on 5 SEP 2018).

Conventions".<sup>45</sup> In *Perifi* and others, the Croatian District Court of Zadar prosecuted starvation of civilians during the siege of Zadar under the Croatian Penal Code as a war crime.<sup>46</sup> The question is what constitutes starvation for the purposes of the war crime? Starvation during armed conflict is used as a "weapon to annihilate or weaken the population".<sup>47</sup> The Rome Statute more broadly refers to the crime of starvation of civilians "by depriving them of objects indispensable to their survival". Respectively, the Elements of Crimes to the Rome Statute provide that "the perpetrator deprived civilians of objects indispensable to their survival".<sup>48</sup> The "deprivation of objects indispensable to survival" is derived from customary international law. Rule 54 of the International Committee of the Red Cross codification of customary international law explicitly prohibits "attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population".<sup>49</sup> Objects indispensable to survival include, but are not limited to, "foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water, installations and supplies and irrigation works."<sup>50</sup> Element 2 of the Elements of Crimes establishes the criminal intent whereby "the perpetrator intended to starve civilians as a method of warfare". Again, the concept of starvation as previously outlined is broader than lack of access to food and water, but includes items indispensable to survival. "The intent is limited to the starvation of the civilian

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<sup>45</sup> Article 8(2)(b)(xxv), Statute of the International Criminal Court (1998).

<sup>46</sup> Croatia, District Court of Zadar. (1997). *Prosecutor v Perici, Judgment*. 24 April.

<sup>47</sup> Protocol Additional To The Geneva Conventions Of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

<sup>48</sup> Elements of Crimes at <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed on 6 SEP 2018).

<sup>49</sup> IC RC Customary IHL, Rule 54. Attacks against Objects Indispensable to the Survival of the Civilian Population.

<sup>50</sup> Article 54(2), Additional Protocol I.

population, as some measure of starvation is arguably permissible against combatants as a method of war".<sup>51</sup> Element 3 of the Elements of Crimes limits the jurisdiction of the International Criminal Court to prosecute conduct which took place "in the context of and was associated with an international armed conflict". The fourth Element of the Crime requires that "the perpetrator was aware of 'actual circumstances that established the existence of an armed conflict'".<sup>52</sup>

The starvation of civilians in besieged areas may also be prosecuted as a crime against humanity of extermination. Article 7 of the Rome Statute outlines that "for the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack", with extermination listed as an act in Article 7(b).<sup>13</sup> Element 1 of the Elements of Crimes for extermination requires that "the perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population." In a footnote to Element 1, inflicting conditions of life explicitly includes "the deprivation of access to food and medicine".<sup>53</sup> If indiscriminate attacks continue, and fighting in port areas continues to hinder the access to food, then there is evidence that all parties are directing their attacks against the civilian population. If this were not true, the attacks would stop and there would also be more humanitarian pauses to alleviate the suffering of the Yemeni people.

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<sup>51</sup> United States Department of Defense, 'Law of War Manual' Office of General Counsel Department of Defense June 2015) para. 17.9.2.1 at <http://www.defense.gov/Portals/1/Documents/pubs/Lawof-War-Manual-June-2015.pdf> (accessed on 5 Sep 2018).

<sup>52</sup> Elements of Crime, supra note 86.

<sup>53</sup> Elements of Crimes < <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>> accessed 5 Sep 2018.

As shown earlier in the legal framework sections, there is a perceived non-international armed conflict in Yemen and there is reluctance to classify these as 'internationalized' or international armed conflicts at this time. Therefore the crimes of starvation committed in the context of a non-international armed conflict would not be prosecuted at the International Criminal Court.<sup>54</sup> With this being said, the chances for justice of the Yemeni people suffering through this protracted conflict are slim to none. And this forgotten war will continue unnoticed by many. On 24 October 2018, BBC news reported the UN's warning, "Half the population of war-torn Yemen- 14 million people- are facing 'pre-famine conditions.'"<sup>55</sup> Professionals in the field have not seen this level of devastation in their careers. And as noted in Chapter Two, starvation is an excruciatingly painful way to die in order for those who are fed three meals a day, to plan and execute a civil war.

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<sup>54</sup> <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

<sup>55</sup> "Yemen Crisis: Half of Population facing 'pre-famine conditions'". (2018) *BBC News*, 24 October.

## CHAPTER V: CONCLUSION

Given all the evidence brought to light in this paper, the Yemeni government will eventually need to investigate the war crimes and humanitarian law violations, which may implicate their officials or other people under their jurisdiction. The government would need to ensure that military or civilian courts or other institutions impartially investigate whether abuses occurred, then identify and prosecute the individuals responsible for those violations in accordance with international fair-trial standards; imposing punishments on those found guilty that are proportionate with their actions. While non-state armed groups do not have the same legal obligation to prosecute violators of the laws of war within their ranks, they are nonetheless responsible for ensuring compliance with the laws of war and have a responsibility when they do conduct trials to do so in accordance with international fair trial standards. It should be noted that crimes against humanity can be charged **regardless** of whether there is an armed conflict, however classified. But Yemen in its current state, does not seem to be able to function accordingly to rise to the occasion and prosecute any perpetrators of war crimes. Though the date comes from 2010, the Global Integrity Report states that Yemen is “very weak” in the areas of Judicial Independence, Fairness, and Citizen Access to Justice.<sup>1</sup> Additionally, in Transparency International’s 2017 Global Corruption Barometer, 75% of the Yemeni respondents stated they had paid a bribe in the last 12 months.<sup>2</sup> This, coupled

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<sup>1</sup> <https://www.globalintegrity.org/research/reports/global-integrity-report/global-integrity-report-2010/gir-scorecard-2010-yemen-rep>.

<sup>2</sup> 2017 Global Corruption Barometer Report at [https://www.transparency.org/whatwedo/publication/people\\_and\\_corruption\\_citizens\\_voices\\_from\\_around\\_the\\_world](https://www.transparency.org/whatwedo/publication/people_and_corruption_citizens_voices_from_around_the_world) (accessed 21 September 2018).

with a weak judicial system, leaves this writer to seriously question whether any justice would be served if left to the Yemeni Courts.

Alternatively, it should be noted that any court with jurisdiction over crimes against humanity could thus prosecute individuals responsible for the abject conditions in Yemen.<sup>3</sup> But will any court end up taking on the above violations, and if so, and after how many years, how does after the event justice even attempt to make up for the immense suffering going on as we speak.

### **Discussion of Research Questions**

Starvation should be prosecuted as a war crime due to deliberately inflicting civilians to inhumane conditions that could bring about its physical destruction of the body in whole or in part.<sup>4</sup> Given all the evidence mentioned throughout this paper and reviewing the statistical information on the increased food insecurity, child stunting and malnutrition rates, inflated food prices, evidence by Amnesty International and the Group of Eminent Experts on Yemen, this writer concludes there is enough evidence to say the civil war and its parties are causing the starvation of the Yemeni people. There is significant evidence of increased child undernourishment, increased food insecurity, increased indiscriminate attacks on markets, ports, and other transportations hubs, and increased food prices that are leading to the physical devastation of the Yemeni people. A longitudinal study would be warranted after the conflict ends to gather further statistics on birth rates, and death rates by starvation of the Yemeni people to show the aftermath of a civil war, as the cease fire will not immediately end the suffering of the population.

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<sup>3</sup>Van Schaack, Beth. 2016. 'Siege Warfare and the Starvation of Civilians as a Weapon of War', at <https://www.justsecurity.org/29157/siege-warfare-starvation-civilians-war-crime> (emphasis added)

<sup>4</sup> Article 6, Statute of the International Criminal Court (1998).

The parties involved should be held accountable in a court of law, whether that court is an independent one, the International Criminal Court, or a Yemeni Court.

In reference to the actuality of any future justice for the Yemeni people for all the injustices they have and continue to endure, this writer feels the chances are slim. Military intervention by third parties to assist dyads in a civil war has important legal implications when there are numerous human rights violations. Which individuals from which country should be accountable? How will justice be served if participation in an intrastate war is ambiguous and convoluted? Will Saudi Arabia and/or Iran be accountable for the egregious food crimes committed inside Yemen? It is highly doubtful when looking at the historical evidence seen from Iraq, where there was shown causality, and the International Criminal Court remained mute. And since there will most likely be no prosecution, since there has not been a single individual in history convicted of committing mass starvation upon a people, where does Yemen go from there? Will Yemen return to its authoritarian past? Would an international actor, such as the United States, help the Yemen on a path to democracy? The implementation of a proper democracy would automatically fill the security vacuum Yemen faces and could place Yemen under the control of no external involvement but the Yemeni people. Looking at the region, where every country surrounding Yemen is a non-democratic country, the outcome is bleak. As stated earlier in Chapter Three, with all the Conventions and their respective protocols imparting quite clear guidelines on civilian treatment in war, the Yemen Civil War may again confirm that a convention or protocol, or international humanitarian law in general are only as good as in international community and court willing to prosecute those who disregard them.

### Suggestions for Further Research

This study, particularly, emphasized the crimes against civilians in relation to food access alone. Further studies should look at how to end the fighting, with a focus on the sale of arms to the Saudi-led coalition must stop. There has been no real moment towards negotiation in this stalled conflict, but there is an uptick on indiscriminate attacks on civilians. In the face of multiple reports pointing to reckless conduct in Yemen and the devastating impact of serious violations of international law on civilians, many countries have continued to sell and transfer weapons to Saudi Arabia and its coalition members for use in the conflict. These arms have been used by the Saudi Arabia-led coalition to kill and injure civilians and shatter the livelihoods of Yemenis. Arms have also been diverted into the hands of Houthi and other armed groups fighting in Yemen. While a host of European countries have suspended arms transfers to the Saudi Arabia and the UAE, other countries, led by the US and UK, continue to supply coalition members with huge amounts of advanced military equipment.<sup>5</sup> U.S. military officials appear increasingly rattled by reports of the deaths caused by American weapons. When pressed, Secretary of Defense James Mattis told reporters at the Pentagon on Tuesday that US support to the Saudi Arabia-led coalition is “not unconditional.”<sup>6</sup>

Another area of research would be if corruption directly led to the civil war, and knowing that Yemen is currently number five on Transparency International’s

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<sup>5</sup> <https://www.amnesty.org/en/latest/news/2015/09/yemen-the-forgotten-war>.

<sup>6</sup> Rasha Mohamed, ‘It’s time for the U.S. to stop supplying weapons to the Saudi-led coalition in Yemen’, *The Washington Post*, 31 August 2018. [https://www.washingtonpost.com/news/democracy-post/wp/2018/08/31/its-time-for-the-u-s-to-stop-supplying-weapons-to-the-saudi-led-coalition-in-yemen/?noredirect=on&utm\\_term=.02a9f97813bd](https://www.washingtonpost.com/news/democracy-post/wp/2018/08/31/its-time-for-the-u-s-to-stop-supplying-weapons-to-the-saudi-led-coalition-in-yemen/?noredirect=on&utm_term=.02a9f97813bd) (accessed 10 September 2018).

Corruption Index (Saudi Arabia being quite corrupt also), where does that leave the civilian population once the civil war ends?<sup>7</sup>

Finally, comparison research of Yemen and Syria would possibly shed some light on how important one war is than another. As seen by the plethora of evidence given in this paper, Yemen is a humanitarian crisis, yet it does not receive the news coverage of political coverage of the U.S. like Syria does. Why is this? Does it have to do with long standing relationships between the U.S. and Saudi Arabia? The acrimony with Iran and Syria? What does each country offer (or not offer) the U.S. as far as strategic positioning, trade, influence, etc.? Comparing the intricacies of each war might prove beneficial for future insight on the involvement of the U.S. in the Middle East and Northern Africa.

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<sup>7</sup> [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](https://www.transparency.org/news/feature/corruption_perceptions_index_2017)

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