

# IHL IN FOCUS: SPOT REPORT

## FOOD INSECURITY IN ARMED CONFLICT AND THE USE OF SIEGE-LIKE TACTICS



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### INTRODUCTION

Sieges<sup>1</sup> generally involve the isolation of an adversary by encircling an area of terrain with a view to inflicting sustained and targeted damage on an enemy by way of shelling and bombardment and/or depriving the enemy of resources. The goal is to force a desired outcome, such as a surrender, or to gain control over enemy territory. Sieges, encirclements and tactics aimed at cutting off the enemies' access to resources have regularly been used in armed conflicts throughout the ages, with such operations also being a common fixture in many contemporary conflicts.

Whereas Clausewitz described siege as 'an undertaking which does not contain the elements of a catastrophe' for the besieger,<sup>2</sup> this generally is not true for the civilian population caught in the besieged area, effectively in the crossfire between the warring parties. While sieges tend to follow a clear military logic, they also inflict specific and negative consequences on the civilian population living inside an affected area, with the impact at times going beyond the geographical and temporal scope of the siege. The examples showcased in this Spot Report speak to a frequently-occurring chain of events. First, an increase in violence funnels civilians into an urban area, increasing pressure on resources, infrastructure and essential services. The besieging force then encircles the area and closes access pathways to prevent the inflow or outflow of direct military assets (personnel, weapons and military equipment) and other assets (food, medical supplies, fuel, etc.) that are used by both the military and the civilian population. To complete the resources cutoff, attacks may be levelled at critical infrastructure, such as water pipelines and power grids. The impacts on civilians hardly need spelling out. While the intention may be to starve a military of resources, the necessity of food and other basic items triggers a cascading effect, often with catastrophic humanitarian consequences. Usually within weeks, resource shortages translate into price hikes, crowding out the most vulnerable from markets. At the same time, farming and agriculture is frequently significantly impacted and may have even ceased due to

1 Sieges and encirclements are not defined in international humanitarian law. On the (lack of a) definition of the notion of sieges as such under IHL, see ICRC, '[International Humanitarian Law and the Challenges of Contemporary Armed Conflicts](#)', 2019, p 23; Emanuela-Chiara Gillard, '[Sieges, the Law and Protecting Civilians](#)', Chatham House Briefing, 27 June 2019, p 2. The Commentaries to the Additional Protocols refer to sieges as 'consist[ing] of encircling an enemy location, cutting off those inside from any communication in order to bring about their surrender'. See Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC (Geneva, 1987), para 4797. Some UN-mandated investigative bodies have adopted a description attributed to UN OCHA according to which a besieged area is one 'surrounded by armed actors with the sustained effect that humanitarian assistance cannot regularly enter, and civilians, the sick and wounded cannot regularly exit'. See Independent International Commission of Inquiry on the Syrian Arab Republic, '[Sieges as a Weapon of War: Encircle, Starve, Surrender, Evacuate](#)', 29 May 2018, §3, fn 2, as well as UN doc A/HRC/42/CRP.1, '[Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014 – Report of the Detailed Findings of the Group of Eminent International and Regional Experts on Yemen](#)', 3 September 2019, §116, fn 749.

2 'No doubt a siege is more or less a great operation, often requiring great labour; but it is an undertaking which does not contain the elements of a catastrophe. If it comes to the worst, the siege can be raised without thereby suffering a great positive loss.' Carl von Clausewitz, *On War*, Book 6, Princeton University Press, 1976, ch 30.

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the volatile security situation, compounding food insecurity. Finally, the delivery of humanitarian assistance is often denied, obstructed, or humanitarian relief personnel and objects militarily targeted, aggravating the existing lack of basic supplies, and often resulting in humanitarian actors scaling back on the provision of aid. While it may seem counterintuitive, action yielding negative impact on the civilian population every so often originates not only from the besieging but also the besieged forces.

Of these humanitarian impacts, the cutting off of food and resulting food insecurity that takes place during a siege-like situation are among the most horrific. Over the past year, populations trapped in areas affected by conflict, such as Mali, Sudan, South Sudan and the Gaza Strip, have faced emergency levels of acute food insecurity (IPC phase 4), with high risks of famine (IPC phase 5) looming over, if not already existing in, certain areas.<sup>3</sup> This has occurred despite the existence of international humanitarian law rules aimed at preventing and mitigating the impact of armed conflict and military operations on civilians, in particular those prohibiting the targeting of objects indispensable to the survival of the civilian population, the use of starvation of civilians as a method of warfare, and the requirement to allow and facilitate the rapid and unimpeded passage of relief consignments, equipment and personnel to civilians in need. Concerns about the impact on civilians of lack of compliance with international humanitarian law in these contexts were underscored by the United Nations Security Council (UNSC) in Resolution 2417 (2018) condemning the starving of civilians as a method of warfare, the unlawful denial of humanitarian access and depriving civilians of objects indispensable to their survival. In December 2019, States Parties amended the Rome Statute of the International Criminal Court (ICC) to include the intentional starvation of civilians as a war crime during non-international armed conflicts, previously only classified as such under the Statute if committed in international armed conflicts. The concerning pattern of food insecurity during armed conflict compounding already dire humanitarian challenges has been increasingly present on the agenda of United Nations (UN) organs.

Against the above, this Spot Report examines situations in which civilians are being exposed to food insecurity – in some cases ending in starvation – in the context of sieges, encirclements and other practices involving cutting the population off from resources.<sup>4</sup> Part 1 sets out the relevant provisions of international humanitarian law (IHL), respect for which would ward off the disastrous consequences for the civilian population witnessed in a number of recent situations involving sieges and siege-like tactics. It addresses the use of the starvation of civilians as a method of warfare and the targeting of objects indispensable to the survival of the civilian population. It further sets out provisions that might be leveraged to avoid food insecurity turning into famine, including the conduct of humanitarian relief operations and evacuations of civilians or arrangements allowing them to leave besieged or encircled areas. It demonstrates the pertinence of these rules through examples from various contemporary armed conflicts. In this sense, the report has primarily focused on the situations unfolding in Burkina Faso, Mali, Myanmar, Nagorno-Karabakh and Sudan: these provide both recent examples of a variety of relevant issues, challenges and concerns, with some of these aspects having received comparatively little attention. The report also references additional cases of food insecurity in armed conflict, as relevant, including Gaza, South Sudan, Syria and Ukraine.

Part 2 considers the recent responsive measures taken at the international level. This includes an increased willingness on the part of the UN Security Council to engage with respect to some situations where armed conflict is resulting in starvation, famine or dangerous levels of food insecurity, for example, in Syria and South Sudan. International judicial mechanisms as well as investigative bodies have also engaged with relevant situations. Notably, the International Court of Justice (ICJ) has issued provisional measures ordering Israel to take

<sup>3</sup> See Integrated Food Security Phase Classification, '[Mali: Acute Malnutrition Situation for June–October 2023 and Projection for November 2023–May 2024](#)', 3 November 2023; '[Sudan: Acute Food Insecurity Situation for April–May 2024 and Projections for June–September 2024 and October 2024–February 2025](#)', 27 June 2024; '[The Gaza Strip – IPC Acute Food Insecurity Analysis May–September 2024](#)', 10 July 2024.

<sup>4</sup> In many recent conflicts, parties have deployed tactics aimed at cutting off the enemy of resources and limiting their movement that, while not amounting to sieges in the traditional sense, bear a very similar negative impact on the civilian population. For examples of such atypical siege-like situations, see the Box on 'Siege-Like' Tactics: Isolating the Population and Controlling Supplies in Myanmar, Nagorno-Karabakh and South Sudan.

all necessary and effective measures to ensure, without delay and in full co-operation with the UN, the 'unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza'.<sup>5</sup> Questions of food insecurity during armed conflict have been or are being considered by the ICC and multiple UN-mandated investigative mechanisms pertaining to the situations in the Syrian Arab Republic, Yemen, South Sudan and Sudan, among others. However, neither option is a panacea. The UNSC is routinely hampered by politicization, while international courts, by nature of the judicial process, are slow and their decisions are not assisted by a centralized mechanism of enforcement. These shortcomings highlight the need for action towards ensuring that parties to an armed conflict – if they *are* to undertake sieges – do so in a way that prevents food insecurity and starvation, and is in line with the requirements of international humanitarian law. Indeed, a besieging party must carry out relevant military operations in accordance with IHL rules relating to distinction, proportionality and precaution, including by complying with its duty of constant care. Compliance can be facilitated through tailored practical guidance, focused awareness-raising, and twinned with targeted advocacy on the part of humanitarian actors.

Part 3 considers the ways in which the impact of food insecurity resulting from the use of siege-like tactics may exceed the geographical and temporal scope of the siege operations as well as the complex issue of how severe food insecurity resulting from armed conflict can spill over onto non-besieged areas and even countries not involved in the respective conflict. Relevant issues are demonstrated through the example of the correlation of production gaps in Ukraine and Myanmar, with price surges in importing (generally food-insecure) countries. Indeed, the idea that a siege (or armed conflict more generally) may impact a far wider population than is usually entertained has wide implications for both law and policy.

Part 4 offers findings and conclusions building on the report's analysis.

The aim of the report is to provide a snapshot of relevant issues arising under IHL in relation to food insecurity linked to the use of siege-like tactics and ways in which these issues have played out in some recent situations of concern. It proposes neither an exhaustive exploration of all relevant legal and policy questions nor a comprehensive analysis of the referenced case studies. In particular, whereas multiple branches of international law may apply to sieges and siege-like situations, including IHL, international human rights law and international criminal law, the focus of this report is on IHL with other rules considered in the context of their interplay with IHL, as relevant.

## PART 1: FOOD INSECURITY RESULTING FROM SIEGES AND THE USE OF SIEGE-LIKE TACTICS: RECENT TRENDS AND ISSUES OF COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW

While extreme food insecurity can occur at any stage of an armed conflict, the risks arguably are most acute in the context of sieges and when they occur as a result of the deployment of siege-like tactics. Here, the severing of food supply chains, the destruction of food stocks and reduced food production capacity can rapidly limit the availability of food and increase its price. Those most vulnerable due to their situation or status, such as persons with disabilities or internally displaced persons, as well as those facing disparities in access to productive resources and services, such as women and female-headed households, suffer the earliest and most severe impacts.

The case of the siege of El Fasher in Sudan showcases how acute food insecurity can result from a diversity of siege-like tactics deployed during armed conflict. Starting in 2023, the Government of Sudan and the Rapid Support Forces (RSF) have fought over control of the city of El Fasher, the capital of North Darfur. In February 2024 the Sudanese Armed Forces (SAF) blocked the passage of humanitarian relief from Chad delivered through the Adré crossing.<sup>6</sup> In April 2024 the capture of the customs and supply point of Melit allowed the RSF to fully encircle El Fasher, block the last remaining main supply route and impose a tight siege on the city.<sup>7</sup> Both parties have taken measures to deprive the other of essential resources, with hundreds of thousands of civilians trapped in the city suffering as a result. Reports indicate that the RSF have tried to cut off the main water supply of the city, and the SAF have bombed the city's only power station.<sup>8</sup> The Independent International Fact-Finding Mission for the Sudan has documented a pattern of destruction of objects indispensable to the survival of the civilian population both by SAF as well as RSF and allied militias.<sup>9</sup> In June 2024, with the population on the

brink of famine, the UNSC demanded that the RSF lift the siege, that all parties allow civilians wishing to do so to leave the city for safer areas, and called on the Sudanese authorities to reopen the Adré border crossing to allow the delivery of humanitarian assistance.<sup>10</sup> With fighting having further intensified in the past months, El Fasher, once a 'city of refuge', has metamorphosed into a 'city of misery and destruction', as one former resident put it, and is on the verge of collapse.<sup>11</sup> The city has been characterized as a 'free-fire zone'<sup>12</sup> with hospitals and health infrastructure, schools and educational facilities, marketplaces, shops and other soft targets routinely hit by military attacks. The UN High Commissioner for Human Rights, Volker Türk, has warned that the fall of El Fasher will come with a high risk of 'ethnically targeted violations and abuses, including summary executions and sexual violence, by the RSF and allied militia', with the situation of internally displaced populations raising particular concerns.<sup>13</sup>

The case of El Fasher, while a particularly egregious example, unfortunately is far from unique. In recent years, the scale of suffering linked to conflict-related food insecurity has elevated the issue to the fore of multilateral debate.

While sieges, encirclements and related tactics are not prohibited under IHL, parties to the conflict engaging in such tactics must do so in line with their obligations under IHL. Such situations regularly involve the use of a variety of means to target the besieged or encircled areas, such as airstrikes, shelling, sniper fire or even ground attacks. In this context, parties to the conflict must ensure that they respect applicable rules related to the conduct of hostilities, including with respect to objects benefiting from special protection. Sieges, encirclements and related tactics, especially when deployed over an extended period of time, result in or contribute to the deterioration of the humanitarian situation and shortage of basic services and supplies for the civilian population, including food and food-related supplies. In such situations, IHL provides for ways to

6 UN doc A/HRC/57/23, 'Report of the Independent International Fact-Finding Mission for the Sudan', 5 September 2024, §87.

7 International Crisis Group, 'Halting the Catastrophic Battle for Sudan's El Fasher', 24 June 2024, Crisis Group Africa Briefing no 198, p 10.

8 Ibid, p 11.

9 UN doc A/HRC/57/23, paras 45–48.

10 UN doc S/RES/2736 (2024). The Adré border crossing was reopened by Sudanese authorities on 15 August 2024; A/HRC/57/23, §87.

11 Emma Ogao, 'Inside Sudan's El Fasher, a City Under Siege Amid a Civil War', *abcNews*, 6 October 2024.

12 Yale School of Public Health, Humanitarian Research Lab, 'Free-Fire Zone: Widespread Aerial and Artillery Bombardment Across El-Fasher', 13 September 2024; Ogao, 'Inside Sudan's El Fasher', supra fn 11; OHCHR, 'Sudan: Türk Sounds Alarm Over Hostilities in El Fasher, Warns of Serious Human Rights Violations', 26 September 2024.

13 OHCHR, supra fn 12.

ameliorate the suffering of civilians and protect them from the dire impact of military operations, including through the provision of humanitarian relief and the removal of civilians either through evacuations or by allowing for and facilitating the voluntary departure of those wishing to do so. These rules are set out in more detail below.

## 1.1 CONDUCT OF HOSTILITIES

Sieges, encirclements and the deployment of relevant tactics frequently involve a complex set of operations. The rules on conduct of hostilities apply to the components of these operations that amount to attacks under IHL, defined as ‘acts of violence against the adversary, whether in offence or defence’.<sup>14</sup> They include kinetic operations and combat action in general,<sup>15</sup> but also encompass other acts that are expected to cause death or injury to persons and the destruction of objects. Regarding the interpretation of the definition, ‘[i]t is well established that the notion of violence in this definition can refer to either the means of warfare or their effects, meaning that an operation causing violent effects can be an attack even if the means used to cause those effects are not violent as such’.<sup>16</sup>

### SELECT RULES ON CONDUCT OF HOSTILITIES

The set of IHL rules relevant to sieges and siege-like tactics include the rules governing the conduct of hostilities.<sup>17</sup> Under the relevant rules, parties to the conflict must, at all times, distinguish between civilians and combatants/fighters and between civilian objects and military objectives. Attacks may only be directed at military objectives, with attacks directed

at civilians/the civilian population or civilian objects, acts/threats with the primary purpose of spreading terror among the civilian population, and indiscriminate attacks prohibited.

When targeting a military objective, a party to the conflict must further respect the proportionality rule (prohibiting the launching of attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated) and take precautionary measures before and during attacks, including through target verification, the choice of means and methods of warfare, prior assessment of the effects of attacks, control during attacks (including suspension or cancellation of the attack, if appropriate) and effective advance warning.<sup>18</sup>

All parties to the conflict must also take all feasible precautions to protect civilians and civilian objects under their control against the effects of attacks. Precautionary measures include evacuating civilians and removing civilian objects from the vicinity of military objectives; avoiding locating military objectives in or near densely-populated areas; and taking other necessary precautions to protect civilians and civilian objects from the dangers of military operations.<sup>19</sup> In addition to the general protection accorded to civilians and civilian objects, some objects benefit from special protection under relevant rules of IHL. The rationale for such additional protection includes the importance of relevant objects to the civilian population and their protection from the effects of armed conflict; the impact and dangers connected with their damage or destruction; or their value to society or mankind more broadly. Such objects include works and installations containing dangerous forces, cultural property or the natural environment, among others.

Of particular relevance for sieges and siege-like situations is the protection of objects indispensable to the survival of the civilian population and the interconnected prohibition of the starvation of civilians as a method of warfare.<sup>20</sup> As such, it is prohibited to attack, destroy, remove or render useless, for the purposes of denying them for their sustenance value, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works. This prohibition applies in both international and non-international armed conflicts

14 See art 49, Protocol [No. I] Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3–434 (Additional Protocol I). The definition of attack contained in art 49 is reflected in customary international law and is applicable to both international and non-international armed conflicts. In this respect, the Commentaries to the Additional Protocols note that the term ‘attack’ has the same meaning in both international and non-international armed conflict, highlighting that this is consistent with relevant discussions during the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict, which drew up and adopted the two Additional Protocols. See Sandoz et al *Commentary on the Additional Protocols*, supra fn 1, para 4783 and fn 19.

15 Sandoz et al, *Commentary on the Additional Protocols*, supra fn 1, para 1880.

16 Laurent Gisel, Tilman Rodenhäuser and Knut Dörmann, ‘Twenty Years On: International Humanitarian Law and the Protection of Civilians Against the Effects of Cyber Operations During Armed Conflicts’, 913 *IRRC* (2021) 312. See also Cordula Droege, ‘Get Off My Cloud: Cyber Warfare, International Humanitarian Law, and the Protection of Civilians’, 94 *International Review of the Red Cross* (2012) 557.

17 The examination of the rules on conduct of hostilities referenced in this report largely draws on the provisions of Additional Protocol I. Whereas Additional Protocol I is only applicable to international armed conflicts occurring between its High Contracting Parties (and against its scope of application defined in Article 1 of the Protocol), the rules pertaining to conduct of hostilities contained in Additional Protocol I are generally considered to reflect customary international law. Where there are differences between the law applicable in international and non-international armed conflicts or controversy about the customary nature of relevant rules, this will be flagged in the analysis.

18 The principles of distinction, proportionality and precaution apply both in international and non-international armed conflicts. Relevant rules are set out in arts 48–52 and 57–58, Additional Protocol I; art 13, Protocol [No. II] Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, Geneva, 8 June 1977 (Additional Protocol II). They are also reflected in the rules contained in Chapters 1–6 of the ICRC’s Customary IHL Database, <https://ihl-databases.icrc.org/en/customary-ihl> (last accessed 15 October 2024).

19 While the relevant rules are generally considered customary in both international and non-international armed conflicts, certain differences exist. For example, when it comes to the obligation to avoid, to the extent feasible, locating military objectives within or near densely-populated areas or the removal of civilians and civilian objects from the vicinity of military objectives, in the view of the ICRC, these rules are ‘arguably’ applicable to non-international armed conflicts. See Rules 23 and 24, ICRC, Customary IHL Database, supra fn 18.

20 Art 54, Additional Protocol I and art 14, Additional Protocol II. See also Rules 53 and 54, ICRC, Customary IHL Database, supra fn 18.

with some narrowly-construed limitations and exceptions.<sup>21</sup> In particular, Additional Protocol I provides for two scenarios where the prohibition on targeting objects indispensable to the survival of the civilian population might not apply: first, where the object is used as sustenance solely for the military or in direct support of military action. However, even in these cases, action that may be *expected* to lead to starvation or force the movement of the civilian population is not permitted. Second, the prohibition may be derogated from where required by imperative military necessity to defend a party's national territory against invasion.<sup>22</sup> Additional Protocol II does not provide for any explicit exceptions to the prohibition contained in Article 18.<sup>23</sup>

During sieges and siege-like operations, military operations commonly impact food systems, including aspects of the system that can be qualified as objects indispensable for the survival of the civilian population. As noted above, in the context of the conflict in Darfur, Sudan, markets, shops, water facilities and other relevant objects have been damaged and destroyed as a result of hostilities, with a pattern of targeting of objects indispensable for the survival of the civilian population having been documented.<sup>24</sup> In Burkina Faso, armed groups parties to the conflict have enforced bans on farming and grazing, seriously affecting livelihoods systems.<sup>25</sup> In Myanmar, the military has imposed severe limitations on trade and transportation in Rakhine State with implications on the population's food security.<sup>26</sup> At times these objects are directly targeted; at other times they incur incidental damage flowing from a diversity of military operations. Parties to the conflict also impose restrictions on the populations' access to fields and other agricultural sites, rivers and other water sources, or obstruct market supplies flows. Moreover, the hostilities

and overall precarious security situation may prevent people from pursuing activities linked to food production, processing, retail and other services.

As set out above (see Box on Select rules on conduct of hostilities), complementing the general prohibition on the direct targeting of civilian objects, parties to the conflict are also prohibited from attacking, destroying, removing or rendering useless objects indispensable to the civilian population's survival, such as food and water, with IHL establishing narrow exceptions as to when the targeting of such objects may be permitted. Moreover, the protection conferred on these objects goes beyond attacks *stricto sensu*, as such objects must also not be otherwise destroyed, removed or rendered useless.<sup>27</sup> Furthermore, proportionality assessments conducted when targeting military objectives must duly consider the incidental damage to civilians and civilian objects caused through damage to or destruction of objects indispensable for the civilian population's survival. Similarly, parties to the conflict must also take reasonable and feasible precautions both in attack and against the effects of attacks. The importance of the principle of constant care when conducting military operations is especially on display in siege-like situations.

At the same time, some measures taken in the context of siege-like operations, in particular measures to secure the encirclement of areas or to cut them off from communication and resources, despite their impact on civilians, may not amount to attacks under IHL, or their qualification as an

21 In this sense, art 54(2), Additional Protocol I provides for the following: 'It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.' The wording of art 14, Additional Protocol II is as follows: 'Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.' The Commentaries to the Additional Protocols highlight that the prohibition of starvation of civilians 'is a rule from which no derogation may be made', stressing that an 'exception in case of imperative military necessity was not adopted'. Sandoz et al, *Commentary on the Additional Protocols*, supra fn 1, para 4795.

22 See arts 54(3) and (5), Additional Protocol I.

23 The Commentaries to the Additional Protocols note that such objects and provisions may be attacked, destroyed, removed or rendered useless when they are specifically intended for military use. The prohibition, however, extends to situations when the military may simply benefit from them. They further note that when such objects are used in such a way that they become a military objective (for example, tall crops used for concealing military assets), 'it cannot be ruled out that they may have to be destroyed in exceptional cases, though always provided that such action does not risk reducing the civilian population to a state of starvation'. Sandoz et al, *Commentary on the Additional Protocols*, supra fn 1, paras 4806–4807. At the same time, the ICRC doubts whether the exception set out in art 54(3) of Additional Protocol I also applies to non-international armed conflicts. See Rule 54, ICRC, Customary IHL Database, supra fn 18.

24 See p 5 supra.

25 Amnesty International, '[Burkina Faso: 'Death was Slowly Creeping on us': Living Under Siege in Burkina Faso](#)', 2 November 2023, p 29. In this sense, see also *The New Humanitarian*, '[To End the Siege on my Burkinabè Town, We Must Open a Dialogue with the Jihadists](#)', 8 February 2024, whereby 'herders have no place to graze their flocks because everything is blocked. Farmers also cannot go out to cultivate'.

26 Kyaw Lynn, '[Myanmar's Military Is Playing a Dangerous Game in Rakhine State](#)', *The Diplomat*, 4 March 2024; Michael Mitsanas, Tanbirul Miraj Ripon, Helen Regan, Rebecca Wright and Avery Schmitz, '["Are We Not Eating Tonight?" Myanmar's Military Junta Accused of Using Hunger as a "Weapon" by Blocking Vital Food Aid](#)', CNN, 25 August 2024.

27 ICRC, '[International Humanitarian Law and the Challenges of Contemporary Armed Conflicts](#)', 2019, p 17.

attack may be controversial.<sup>28</sup> This would also imply that such action would not incur a proportionality assessment as attacks would under IHL. In such cases, some experts and stakeholders have noted the added value of incorporating a proportionality assessment as a matter of good practice, an approach also adopted by instruments on naval and aerial blockades.<sup>29</sup>

## 1.2 MEASURES TO MITIGATE CIVILIAN SUFFERING

Actions by parties to the conflict taken in the context of sieges, encirclements and the deployment of siege-like tactics may come with severe negative impacts on the civilian population in these areas. This may be the case even when parties carry out their operations in compliance with applicable rules of IHL, in particular those regulating the conduct of hostilities. The cases considered for the purposes of this report showcase the extensive destruction of the area under siege or encirclement with critical infrastructure damaged or destroyed; food systems incurring critical and frequently long-term damage, resulting in acute food insecurity, or even famine or starvation; or the movement of the civilian population severely restricted, limiting the feasibility of accessing resources and even to find shelter from the dangers of ongoing military operations.

Pertinently to such situations, IHL contains a set of rules specifically aimed at mitigating the humanitarian impact of armed conflict and military operations on civilians. Importantly, these include rules on the role of humanitarian organizations, including their right to offer their services to parties to the conflict; the protection of humanitarian relief personnel and objects; and on allowing and facilitating the passage of humanitarian relief to civilians in need.<sup>30</sup> IHL further contains rules pertaining to the removal of civilians from besieged areas through evacuation or by facilitating the voluntary departure of those wishing to leave.

## Humanitarian relief

A particularly troubling dimension of current trends in armed conflicts relates to ways in which parties to a conflict actively obstruct efforts that could mitigate the food insecurity-related impacts of siege-like tactics. Indeed, in situations when the civilian population suffers hardship due to the lack of supplies to meet basic needs, rapid and unimpeded passage of humanitarian relief, which is impartial in character and conducted without any adverse distinction, shall be allowed and facilitated, subject to the consent and right of control of the parties concerned.<sup>31</sup> In cases where ‘the civilian population is threatened with starvation and a humanitarian organization which provides relief on an impartial and non-discriminatory basis is able to remedy the situation’, consent should not be withheld.<sup>32</sup> Refusal to permit an impartial humanitarian body to operate in such circumstances may amount to a violation of IHL. Moreover, in case of the territorial state or other states exercising effective control over the territory and population in question, such refusal may also run counter to their obligation to guarantee human rights to persons within their jurisdiction.

### SELECT RULES ON HUMANITARIAN RELIEF

The obligation to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to the right of control of concerned parties, is considered customary in both international and non-international armed conflicts. However, the detailed parameters of relevant treaty rules show some differences – those most pertinent are set out below.

In international armed conflicts, when the civilian population of a territory under the control of a party to the conflict (that is not occupied territory) is not adequately provided with clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population and objects

<sup>28</sup> See the discussion in Gloria Gaggioli, ‘Joint Blog Series on International Law and Armed Conflict: Are Sieges Prohibited Under Contemporary IHL?’, *EJIL:Talk!*, 30 January 2019; Gillard, ‘Sieges, the Law and Protecting Civilians’, supra fn 1, p 8; Maxime Nijs, ‘Humanizing Siege Warfare: Applying the Principle of Proportionality to Sieges’, 914 *IRRC* (2021) 694–696; Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, 2nd edn, Edward Elgar Publishing, 2024, p 639, para 10.252.

<sup>29</sup> See art 102(b) in Louise Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, CUP, 1995; article 157(b) in Programme on Humanitarian Policy and Conflict Research at Harvard University (HPCR), *Manual on International Law Applicable to Air and Missile Warfare*, CUP, 2013. See also James Kraska, ‘Siege’, in *Max Planck Encyclopedia of Public International Law*, December 2009, para 9; as well as Sassòli, *International Humanitarian Law*, supra fn 28, p 639, para 10.252 (also quoting the US Department of Defence, Office of General Counsel, *Law of War Manual*, June 2015 (updated July 2023), p 324, para 5.20.2).

<sup>30</sup> See, in particular, arts 23 and 59, Convention [No. IV] relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Fourth Geneva Convention); arts 70–71, Additional Protocol I; art 18 Additional Protocol II.

<sup>31</sup> See Rule 55, ICRC, Customary IHL Database, supra fn 18.

<sup>32</sup> See ICRC, Customary IHL Database, supra fn 18, commentary to Rule 55. See also ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd edn, Geneva, 2016, para 834.



necessary for religious worship,<sup>33</sup> relief actions that are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the parties concerned in such actions.<sup>34</sup> In such situations, the parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel, even if they are destined for the civilian population of the adverse party.<sup>35</sup> The parties concerned may prescribe technical arrangements for the passage and may make permission conditional on having an impartial actor oversee the distribution of humanitarian assistance.<sup>36</sup> Relief consignments must not be diverted, except in cases of urgent necessity in the interests of the civilian population concerned.<sup>37</sup>

In occupied territory, if whole or part of the population is inadequately supplied, the Occupying Power shall agree to and facilitate relief schemes on behalf of the population.<sup>38</sup> All High Contracting Parties shall permit the free passage of relief consignments subject to their right of control.

In non-international armed conflicts, relief actions for the civilian population 'which are of an exclusively humanitarian and impartial nature and which are conducted without adverse distinction' shall be undertaken, subject to the consent of the High Contracting Party concerned, in case the population 'is suffering from undue hardship owing to a lack of the supplies essential for its survival such as foodstuffs and medical supplies'.<sup>39</sup>

Shortcomings pertaining to humanitarian access and the unobstructed delivery of humanitarian relief activities are a disturbingly common feature of contemporary armed conflicts and of particular concern during sieges or other contexts when the civilian population is cut off from basic resources and supplies. The following examples depict some of the relevant trends witnessed.

In the early months of 2022, Ansaroul Islam and Jama'a Nusrat ul-Islam wa al-Muslimin (JNIM) seized control of the areas immediately surrounding the city of Djibo, Burkina Faso. As affected populations were funneled into the city, the population of Djibo grew from 30,000/60,000 (pre-siege) to around 300,000 (December 2022).<sup>40</sup> The armed groups prevented supplies from entering the town, including by ambushing humanitarian convoys and placing mines and improvised explosive devices on the roads in and out of the city.<sup>41</sup> Food insecurity rose quickly, exacerbated by attacks on water infrastructure and generalized insecurity preventing farming activity.<sup>42</sup> However, it was not only armed groups that obstructed aid flows. As the Government of Burkina Faso imposed military escorts on all convoys (ostensibly to prevent supplies reaching or being diverted to armed groups) humanitarian actors, concerned that these measures might undermine their compliance with the principle of neutrality, scaled down operations and/or reverted to airdrops.<sup>43</sup> Throughout 2023 and 2024, attacks have continued, and the humanitarian situation continues to worsen.<sup>44</sup>

In Mali, the Government's conflict with JNIM reached a new height in 2023 when the city of Timbuktu came under siege. As a first step, the group threatened that trucks attempting to enter the city would be targeted.<sup>45</sup> By mid-August, JNIM had blocked the roads linking Timbuktu with the south of the

33 Art 69, Additional Protocol I.

34 Art 70(1), Additional Protocol I. It is important to note that the wording of art 23 of the Fourth Geneva Convention is more restrictive, only addressing the free passage of 'all consignments of medical and hospital stores' and 'objects necessary for religious worship' intended 'only for civilians of another High Contracting Party', as well as 'essential foodstuffs, clothing and tonics' intended for children under 15, expectant mothers and maternity cases. See also J. Pictet et al (eds.), *Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War: Commentary*, Geneva, ICRC, 1958, p 180.

35 Art 70(2), Additional Protocol I.

36 Art 70(3), Additional Protocol I. Whereas the provision refers to 'protecting powers', in contemporary armed conflicts the ICRC or other impartial humanitarian organizations carry out the functions of protecting powers. See *How Does Law Protect in War*, Glossary, <https://casebook.icrc.org/a-to-z/glossary/protecting-powers> (last accessed 15 October 2024).

37 Art 70(3), Additional Protocol I.

38 Art 59, Fourth Geneva Convention. Additional provisions pertaining to relief activities on occupied territory and the responsibilities of the Occupying Power include arts 55, 56, 60–62, Fourth Geneva Convention; arts 69 and 71, Additional Protocol I.

39 Art 18, Additional Protocol II.

40 Sam Mednick, '[African Leaders Gather for Summit to Address Growing Humanitarian Needs on the Continent](#)', *PBS News*, 27 May 2022; *The New Humanitarian*, '[To End the Siege on my Burkinabè Town, We Must Open a Dialogue with the Jihadists](#)', supra fn 25.

41 Amnesty International, '[Burkina Faso](#)', supra fn 25, pp 9, 41 and 47.

42 Maria Gerth-Niculescu and a Burkinabè journalist, '[In Burkina Faso's Blockaded Towns, War Crimes and Mutual Aid](#)', *The New Humanitarian*, 5 December 2023; *The New Humanitarian*, supra fn 23.

43 Amnesty International, '[Burkina Faso](#)', supra fn 25, pp 9, 52 and 56–57, analysing the 'Arrêté ministériel no 2022-00036/MTMUSR/MDAC/MATDS/MJDHRI/MEFP/MDICAPME portant sécurisation des véhicules de transport d'hydrocarbures et autres matières ou marchandises dangereuses et de transport de marchandises divers dans les zones touchées par les actes de terrorisme' (19 August 2022).

44 See OCHA, '[Burkina Faso](#)'; European Commission, European Civil Protection and Humanitarian Aid Operations, '[Burkina Faso](#)'.

45 Wion, '[Timbuktu Under Siege: Jihadist Fighters Block Roads, Cut Off Supplies](#)', 22 August 2023; Aanu Adeoye, '[Historic Timbuktu Endures Weeks-Long Jihadist Blockade](#)', 21 September 2023.

country, as well as all connections through the Niger River.<sup>46</sup> In September, the only commercial airline still operating to Timbuktu cancelled its flights due to security concerns.<sup>47</sup> By mid-October, the 136,000 residents trapped in Timbuktu, including 74,000 children, were facing critically low supplies of food, fuel and medicine with prices having risen tenfold.<sup>48</sup> Although mediation by local community chiefs facilitated the passage of some humanitarian supplies in December 2023, the siege was reinstated shortly afterwards due to JNIM claiming that the Government had taken advantage of the situation and alleging crimes committed by the Wagner group (which supports the Government of Mali in its armed conflict against rebel groups).<sup>49</sup> According to reports, in recent months, some food and aid supplies have been allowed to enter Timbuktu, reducing the impact of the encirclement.<sup>50</sup> However, the situation has not improved for the city of Ménaka (east of Gao and close to the border with Niger), which the Islamic State in the Great Sahara placed under siege in early 2024.<sup>51</sup> Reports indicate that ‘government and aid groups [were] only able to deliver a very limited amount of food, medicines, and other essential items’ to the 140,000 people (including over 80,000 children) trapped there.<sup>52</sup>

A third example concerns the conflict between Myanmar’s armed forces (the Tatmadaw) and various ethnic armed organizations, including the Arakan Army, which has seen all sides adopt measures that impacted the delivery of humanitarian aid in Rakhine State. In early 2023, the National Unity Government (an opposition alliance) ‘strongly urge[d] all local and international non-

governmental organisations and civil society organisations to seek prior authorisation from the respective ministries of the National Unity Government before taking surveys, implementing projects, and travelling through or within the areas administered by the National Unity Government’.<sup>53</sup> In November 2023, the Government ‘imposed an unprecedented blockade on all trade, transportation, and travel throughout [Rakhine] State’.<sup>54</sup> Measures have further included the adoption and stringent application of legislation imposing cumbersome procedures for – where not altogether preventing – the delivery of humanitarian aid.<sup>55</sup> Authorities have largely stopped issuing travel authorizations to contested or rebel-controlled territory, leading to humanitarian organizations being unable to meet the humanitarian needs of the population.<sup>56</sup> These measures continued into 2024, contributing to the deterioration of the humanitarian situation in Rakhine State,<sup>57</sup> including the disruption to the accessibility and delivery of basic services, drastic reduction of basic supplies and the destruction of infrastructure, including healthcare facilities.<sup>58</sup>

Obstacles to the delivery of humanitarian aid in these contexts are frequently compounded through the application of counter-terrorism frameworks, with the number of armed groups designated as terrorist organizations (whether by the UNSC, regional organizations or at the domestic level) engaged in non-international armed conflicts having been on a steady rise in the past years.<sup>59</sup>

Acts of violence committed by such groups involved in armed conflicts ‘are both a contributing factor to humanitarian

46 Wion, ‘Timbuktu Under Siege’, supra fn 34; see also International Crisis Group, ‘Northern Mali: A Conflict with No Victors’, 13 October 2023.

47 Tiemoko Diallo, ‘Commercial Flights Halted to Mali’s Timbuktu Amid Islamist Blockade’, *Reuters*, 11 September 2023.

48 Save the Children, ‘Siege in Timbuktu: Nearly 74,000 Children Trapped in City and Running out of Food’, 27 November 2023; Mohamed Ibrahim, ‘Mali Crisis: Life in Timbuktu and Gao under Siege by Islamist Fighters’, *BBC News*, 8 October 2023.

49 Sara Monetta, ‘Timbuktu: Mali’s Ancient City Defies Jihadist Siege to Stage a Festival’, *BBC News*, 19 December 2023.

50 Save the Children, ‘Mali: 80,000 Children Trapped and Running out of Food in Second Blockaded Town’, 1 May 2024; see also Mamadou Tapily, ‘As Army Operations Ramp Up in Mali, Rebel Groups Impose “Suffocating” Blockades’, *The New Humanitarian*, 12 March 2024.

51 Tapily, ‘As Army Operations Ramp Up in Mali’, supra fn 39.

52 Save the Children, ‘Mali: 80,000 Children Trapped and Running out of Food in Second Blockaded Town’, supra fn 50.

53 Jacob Goldberg, ‘Myanmar Opposition Asks Aid Groups to Seek Permission to Enter its Territory’, *The New Humanitarian*, 24 March 2023.

54 Kyaw Lynn, ‘Myanmar’s Military Is Playing a Dangerous Game in Rakhine State’, *The Diplomat*, 4 March 2024.

55 See especially arts 28(m) and 38(a)–(b) of Myanmar, State Administration Council Law no 46/2022 5th Waxing of Tazaungmone 1384 ME, 28 October 2022 – reprinted as annex to International Commission of Jurists, ‘Myanmar State Administration Council Organization Registration Law 2022: Legal Briefing’, November 2022.

56 Mitsanas et al, ‘“Are we not eating tonight?”’, supra fn 26.

57 OHCHR, ‘Myanmar: Growing Human Rights Crisis in Rakhine State’, 24 May 2024.

58 Nimrat Kaur, ‘Denial of Humanitarian Assistance is a Death Sentence in Myanmar’, *The New Humanitarian*, 11 June 2024.

59 United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED), ‘The Interrelationship Between Counter-Terrorism Frameworks and International Humanitarian Law’ (2022), p 4.

crises and one that undermines humanitarian action by endangering humanitarian actors and impeding the delivery of their activities'.<sup>60</sup> However, counter-terrorism measures have also been shown to negatively impact humanitarian operations in contexts where groups designated as terrorists are active. Humanitarian actors have noted different ways in which relevant measures have, inter alia, restricted access to populations in areas where such actors operate and impeded or restricted the delivery of humanitarian relief.<sup>61</sup> In certain circumstances, domestic counter-terrorism laws have either 'criminalized such activities as support for terrorism or introduced legal uncertainty as to their scope'.<sup>62</sup> The challenge posed to the delivery of principled humanitarian activities by the interplay between terrorism and armed conflict and the application of counter-terrorism frameworks and IHL has had a prominent place on the agenda of the UN and other international and regional organizations and fora, with the Security Council tackling relevant issues, among others, in its Resolutions 2462 (2019) and 2482 (2019) as well as, more recently, Resolution 2664 (2022) introducing a 'humanitarian carve-out' to the asset freeze measures imposed by UN sanctions regimes.<sup>63</sup>

### Removal of the civilian population from besieged areas

The removal of civilians from besieged areas through evacuation or by facilitating the voluntary departure of those

wishing to leave serves as additional means of protecting them from the adverse impact of military operations, including acute food insecurity. Whereas IHL prohibits the forced displacement of populations,<sup>64</sup> evacuations can be ordered, subject to strict conditions, when the security of the civilians or imperative military reasons so demand.<sup>65</sup> Such evacuation measures and agreements must take into account the interests of the civilian population.

Civilians are further indirectly protected through rules governing the conduct of hostilities, with the requirement to take precautions being particularly relevant to this effect.<sup>66</sup> The duty to take precautions implies that, when conducting military operations, parties to the armed conflict must take constant care to spare the civilian population. Evacuations of civilians from a besieged area or facilitating their voluntary departure, in particular when civilians are facing acute food insecurity or famine, would be a step towards addressing relevant obligations.<sup>67</sup>

Certain categories, such as the wounded and the sick, children, the elderly, persons with disabilities and maternity cases, benefit from special protection. During international armed conflict, parties to the conflict 'shall endeavour to conclude local agreements for the removal from besieged and encircled areas' of civilians falling in these categories.<sup>68</sup> Furthermore, measures should be taken, both

<sup>60</sup> Ibid, p 6.

<sup>61</sup> See e.g. Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, independent study commissioned by OCHA and NRC, 2013; ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (32IC/15/11), Geneva, October 2015.

<sup>62</sup> CTED, supra fn 59, p 7. See also International Committee of the Red Cross, Statement at Security Council Debate: *Threats to International Peace and Security Caused by Terrorist Acts: International cooperation in Combating Terrorism 20 Years After the Adoption of Resolution 1373 (2001)*, 12 January 2021, <https://www.icrc.org/en/document/counter-terrorism-measures-must-not-restrict-impartial-humanitarian-organizations> (last accessed 15 October 2024)

<sup>63</sup> UN doc S/RES/2664 (2022), para. 1. Note, however, that the exemption to the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida sanctions regime has been established for two years (see para 2), set to expire on 8 December 2024, unless the Security Council acts to extend.

<sup>64</sup> In international armed conflicts, in line with art 49 of the Fourth Geneva Convention, an Occupying Power may only conduct temporary evacuations of protected persons within the occupied territory and only if such measure is required for the protected persons' own security or on grounds of an existing imperative military necessity. Evacuation outside of the occupied territory may only take place where 'for material reasons it is impossible to avoid such displacement'. Evacuated persons must be transferred back to their homes as soon as hostilities in their area of origin have stopped. See also J.S. Pictet (ed.), *The Geneva Conventions of 12 August 1949: Commentary*, ICRC, 1958, pp 280–282; Rules 129–133, ICRC, Customary IHL Database, supra fn 18. In non-international armed conflicts, it is prohibited to order the displacement of civilians for reasons related to the conflict, except where required for their own security or imperative military reasons. Civilians should also not be compelled to leave their own territory for reasons connected with the conflict. See art 17, Additional Protocol II. See also Rule 129, ICRC, Customary IHL Database, supra fn 18.

<sup>65</sup> Art 49(2), Fourth Geneva Convention; art 17(1), Additional Protocol II.

<sup>66</sup> See D.J. Cantor, 'Does IHL Prohibit the Forced Displacement of Civilians During War?' 24(4) *International Journal of Refugee Law* (2012) 840–846, 841–842; D. Casalin, 'Prohibitions on Arbitrary Displacement in IHL and Human Rights: a Time and a Place for Everything', in P. De Hert et al (eds), *Convergences and Divergences Between International Human Rights Law, International Criminal Law and International Humanitarian Law*, Intersentia, 2018, 223–257, 236.

<sup>67</sup> 'In a besieged area where hostilities are taking place, and in view of the risk that poses to them, one obvious precautionary measure is to evacuate civilians, or at least allow them to leave.' ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, 2019, p 23. For more on the argument whereby '[a]t a minimum, Parties engaged in siege are obliged to arrange for removal of starving civilian populations from besieged areas to the extent they are unable or unwilling to supply them with adequate food and water in the besieged area', see Sean Watts, '[Under Siege: International Humanitarian Law and Security Council Practice Concerning Urban Siege Operations](#)', Counterterrorism and Humanitarian Engagement Project Research and Policy Paper, May 2014, p. 16, as well as Sassòli, *International Humanitarian Law*, supra fn 28, pp 643–646, paras 10.264–10.272.

<sup>68</sup> Art 17, Fourth Geneva Convention.

in international and non-international armed conflicts, to temporarily remove children from the area of hostilities to a safe area within the country and ensure that they are accompanied by persons responsible for their safety and wellbeing.<sup>69</sup> The complementarity between rules of international human rights law and IHL is particularly important when addressing the needs of persons who are vulnerable due to their status or situation. In all cases of displacement or evacuation, in both international and non-international armed conflicts, all possible measures must be taken to ensure that displaced or evacuated civilians are received in 'satisfactory conditions of shelter, hygiene, health, safety and nutrition'<sup>70</sup> and that family members are not separated.<sup>71</sup> Furthermore, '[d]isplaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist'.<sup>72</sup>

Unfortunately, there are multiple examples of parties to the conflict refusing to allow or facilitate the safe departure of civilians or having issued evacuation orders or entered into agreements that did not duly consider the interests of the civilian population. Such conduct is inconsistent with IHL rules and may result in the worsening of the humanitarian situation. In Burkina Faso, civilians residing in besieged towns have limited freedom of movement, and leaving their cities may expose them to attacks and other violations, including sexual violence or summary executions.<sup>73</sup> The Independent International Commission of Inquiry on the Syrian Arab Republic raised concerns about evacuation agreements resulting in the forced displacement of civilian compounding practices that the Commission characterized as collective punishment.<sup>74</sup>

## HUMANITARIAN CORRIDORS: THE CASE OF EL FASHER AND GAZA

Current armed conflicts highlight the importance of opening humanitarian corridors and allowing the civilian population to evacuate besieged areas. The International Committee of the Red Cross (ICRC) described humanitarian corridors as 'agreements between parties to the armed conflict to allow for safe passage for a limited time in a specific geographic area [which] can allow civilians to leave, humanitarian assistance to come in or allow for the evacuation of the wounded, sick or dead'.<sup>75</sup>

With respect to **Sudan**, the issue of opening humanitarian corridors for civilians fleeing the siege of El Fasher has ranked high on the international agenda. The Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) have wrestled over control of the capital city of North Darfur since the spring of 2023. However, in April 2024, the capture of Melit allowed the RSF to fully encircle El Fasher, block the last remaining main supply route, and impose a tight siege on the city.<sup>76</sup> Since then, the RSF have claimed to have 'opened two corridors for civilians to leave the city', and other armed groups that proclaim to be neutral in the fighting have 'offer[ed] to help secure evacuation corridors from the city'.<sup>77</sup> However, this move has been opposed by groups fighting against the RSF, for fear that the evacuations would be instrumentally carried out 'to depopulate El Fasher in advance of a full-scale assault' by the RSF.<sup>78</sup> The importance of humanitarian corridors to ensure the protection of civilians in El Fasher has been reaffirmed by the UNSC in Resolution 2736 (2024), which has demanded that all parties to the conflict 'allow[] civilians wishing to move within and out of El Fasher to safer areas to do so'.<sup>79</sup>

The issue of humanitarian corridors has been at the forefront of diplomatic as well as protection initiatives in relation to the hostilities in **Gaza** since October 2023. The issue has become particularly urgent after a series of more than 50 evacuation orders by the Israeli Armed Forces (IDF), covering about 86 percent of the Gaza Strip as of mid-September 2024, have resulted in the repeated displacement of significant segments of the civilian population of Gaza.<sup>80</sup> Against this background, several initiatives have been taken to address the humanitarian crisis affecting hundreds of thousands of civilians. In November 2023, the UNSC adopted Resolution 2712 (2023), in which it 'call[ed] for urgent and extended humanitarian pauses and corridors throughout the Gaza Strip for a sufficient number of days' to enable humanitarian access, facilitate the provision of essential goods and services important to the wellbeing of civilians, and enable urgent rescue and recovery efforts.<sup>81</sup> The delivery of humanitarian supplies continues to face considerable challenges: whereas access to Northern Gaza has been

69 Art 4(3), Additional Protocol II; art 17, Fourth Geneva Convention. See also art 78, Additional Protocol I.

70 Art 49(3), Fourth Geneva Convention; art 17, Additional Protocol II; Rule 131, ICRC, Customary IHL Database.

71 Rule 131, ICRC, Customary IHL Database supra fn 18; see also art 49, Fourth Geneva Convention.

72 Rule 132, ICRC, Customary IHL Database supra fn 18; see also art 49, Fourth Geneva Convention.

73 Amnesty International, 'Burkina Faso', supra, fn 25, p 16.

74 Independent International Commission of Inquiry on the Syrian Arab Republic, '[Sieges as a Weapon of War](#)', supra fn 1, paras 3 and 18–25.

75 ICRC, '[How Humanitarian Corridors Work to Help People in Conflict Zones](#)', 3 June 2022.

76 International Crisis Group, '[Halting the Catastrophic Battle for Sudan's El Fasher](#)', 24 June 2024, Crisis Group Africa Briefing no 198, Section IV.

77 Ibid.

78 Ibid.

79 UN doc [S/RES/2736 \(2024\)](#), para 2.

80 OCHA, '[Humanitarian Situation Update #218 | Gaza Strip](#)', 16 September 2024. Concerns have been expressed with respect to the evacuation orders by the ICRC ('[Israel and the Occupied Territories: Evacuation Order of Gaza Triggers Catastrophic Humanitarian Consequences](#)', 13 October 2023); UN independent experts ('[Israel/Occupied Palestinian Territory: UN Experts Deplore Attacks on Civilians, Call for Truce and Urge International Community to Address Root Causes of Violence](#)', 12 October 2023) and the WHO ('[WHO Pleads for Immediate Reversal of Gaza Evacuation Order to Protect Health and Reduce Suffering](#)', 13 October 2023).

81 UN doc [S/RES/2712 \(2023\)](#), 15 November 2023, para 2 (emphasis in the original).

blocked by the IDF during much of the war, access to Southern Gaza has been severely curtailed since May 2024, when the IDF launched an offensive on Rafah.<sup>82</sup> Initiatives by third states (such as the airdropping of aid supplies or the creation of a pier to deliver supplies) have proved costly and ineffective.<sup>83</sup> In June 2024 Israel announced that it would carry out humanitarian pauses to allow aid from the Kerem Shalom crossing. However, UN experts raised concerns that famine had spread throughout the Gaza Strip in July 2024.<sup>84</sup> Humanitarian corridors have proven more successful in ensuring the evacuation from Gaza of the sick and wounded as well as the vulnerable.<sup>85</sup> Since October 2023, the World Health Organization (WHO) has carried out several such evacuations, in coordination with third states such as Spain and the United Arab Emirates.<sup>86</sup> In August 2024, all parties to the conflict also agreed to a series of humanitarian pauses to allow for the vaccination of children against polio<sup>87</sup> – the first round of which was completed in early September 2024.<sup>88</sup>

### 'SIEGE-LIKE' TACTICS: ISOLATING THE POPULATION AND CONTROLLING SUPPLIES IN MYANMAR, NAGORNO-KARABAKH AND SOUTH SUDAN

The complete encirclement of towns and villages is not the only way to cut off civilians from basic supplies and prevent their movement. Severe food insecurity may result from a variety of war-time acts, as multiple examples from recent armed conflicts demonstrate. In a number of conflicts, parties have deployed tactics aimed at cutting off the enemy from resources and limiting their movement that, while not amounting to sieges in the traditional sense, bear a very similar negative impact on the civilian population. In **South Sudan**, severe food insecurity stemmed from the forced displacement of persons and the subsequent destruction of both stockpiles and the means of producing food. The Commission on Human Rights in South Sudan found that it had reasonable grounds to believe that both the Government forces of South Sudan and the Sudan's People Liberation Army in Opposition (SPLA-IO) had breached the prohibition on starving the civilian population as a method of warfare.<sup>89</sup> The Commission documented several

instances in 2018 where the Government forces, after attacking villages and forcing residents to hide in the bush, conducted extensive looting of the village, pillaging objects indispensable to the survival of the civilian population, including food supplies, setting fire to civilian homes and stealing the pumps used to pump water from boreholes.<sup>90</sup> The Commission also found that Government authorities had 'stag[ed] the return of ethnic Dinkas into an area historically populated by the Fertit community', and that they began 'exerting pressure on humanitarian organisations to assist the staged population movement and to provide new arrivals with food'.<sup>91</sup> Finally, the Commission recalled several examples where 'both Government and SPLA-IO (RM) forces have deliberately and intentionally interfered with the capability of international humanitarian aid organisations to deliver vital foodstuffs to communities in need, including through the arbitrary detention of humanitarian aid workers'.<sup>92</sup> As a result, the Commission recommended, among other things, that the Government of South Sudan '[a]llow humanitarians unhindered access in the delivery of items essential to human life' and '[e]nsure that all communities have rapid, unhindered, and sustained access to humanitarian aid'.<sup>93</sup>

The conflict over the region of **Nagorno-Karabakh**, long fought over by Armenia and Azerbaijan, similarly highlights the way in which belligerents can affect the food security and freedom of movement of civilians with tactics and behaviour that, while not amounting to a traditional siege, result in comparable negative effects on the civilian population. After the Second Nagorno-Karabakh War of 2020, the 2020 Tripartite Agreement between Armenia, Azerbaijan and the Russian Federation provided that Azerbaijan 'shall guarantee safe movement of citizens, vehicles and cargo in both directions along the Lachin corridor', a five kilometre-wide strip ensuring the communication between Armenia and Nagorno-Karabakh, placed under the control of a Russian peace-keeping contingent.<sup>94</sup> Already in December 2022, protests by Azerbaijani activists had prevented all traffic on the Lachin route with the exception of a handful of convoys from the ICRC and Russia,<sup>95</sup> resulting in severe shortages of food and medical supplies and in disruptions to the supply of electricity, natural gas and vehicle fuel for the approximately 120,000 residents of Nagorno-Karabakh.<sup>96</sup> In April 2023, the opening of a checkpoint on the Lachin route by Azerbaijan led to the

82 Riley Sparks, "'Shot Through the Knees": How the Rafah Invasion Broke Gaza's Aid Response', *The New Humanitarian*, 22 July 2024.

83 Eric Reidy, 'US Gaza Pier to Close After Costing \$230m for a Day's Worth of Aid', *The New Humanitarian*, 16 July 2024; Sparks, "'Shot Through the Knees'", supra fn 82.

84 OHCHR, 'UN Experts Declare Famine Has Spread Throughout Gaza Strip', 9 July 2024.

85 See, however, UNICEF, 'UNICEF Deputy Executive Director Ted Chaiban Media Briefing on Mission to Israel, the Gaza Strip and the West Bank', 19 September 2024, stressing the 'need [for] more medical evacuations for children and their guardians whose lives can be saved only with a medical treatment abroad'.

86 WHO, 'Fifteen Children from Gaza to Receive Urgent Medical Care in Spain', 24 July 2024; 'WHO and United Arab Emirates Evacuate 85 Patients from Gaza', 30 July 2024. See also WHO, 'Israeli-Palestinian Conflict: Oct 2023–Sep 2024'.

87 Tom Bennett, 'Israel Agrees to Pauses in Fighting for Polio Vaccine Drive', *BBC*, 3 August 2024.

88 WHO, 'First Phase of Polio Campaign Concludes Successfully in Gaza', 4 September 2024.

89 UN doc A/HRC/45/CRP.3, Conference Room Paper of the Commission on Human Rights in South Sudan, "'There is Nothing Left for Us": Starvation as a Method of Warfare in South Sudan', paras 144 and 146–147.

90 UN doc A/HRC/40/CRP.1, 'Report of the Commission on Human Rights in South Sudan', paras 815–816 (Mboro village), 820–823 (Ngoko village), 827–828 (Tagoti Vimoi village); UN doc A/HRC/45/CRP.3, paras 64 (Wadhalelo village), 68–69 (Mboro village), 79 (Ngoko village), 85 (Tagoti Vimoi village).

91 UN doc A/HRC/45/CRP.3, paras 70–72.

92 UN doc A/HRC/45/CRP.3, paras 74, 128–131 and 147.

93 UN doc A/HRC/45/CRP.3, paras 148(b)–(c).

94 [Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation](#), 10 November 2020, para 6.

95 Foreign Ministry of Armenia, '[Statement on the Azerbaijani Provocation in the Lachin Corridor](#)', 13 December 2022; '[Remarks of the Permanent Representative of Armenia During the Meeting of the OSCE Permanent Council](#)', 9 February 2023.

96 Foreign Ministry of Armenia, '[Statement by the Foreign Ministry of Armenia on the Continued Blockade of the Lachin Corridor](#)', 3 January 2023; '[Speech by Deputy Minister of Foreign Affairs of the Republic of Armenia Vahe Gevorgyan at a Meeting of the UN Security Council on the Protection of Civilians in Armed Conflict](#)', 22 May 2023; '[Speech of Minister of Foreign Affairs of Armenia at the UN Security Council Urgent Meeting](#)', 16 August 2023..

further deterioration of the situation on the ground,<sup>97</sup> as the ICRC (the only remaining humanitarian organization to operate on that route) could not deliver food after 14 June and medical supplies after 7 July.<sup>98</sup> In the following months, neither party to the armed conflict consented to the passage of humanitarian supplies arriving from the territory of the other.<sup>99</sup>

In September 2023, the announcement that Armenia and Azerbaijan had reached an agreement to re-open the Lachin corridor simultaneously with another road linking the enclave with the Azerbaijani city of Aghdam<sup>100</sup> was followed, shortly afterwards, by a military operation that allowed Azerbaijan to re-gain complete control of the full territory of Nagorno-Karabakh.<sup>101</sup>

The armed conflict in Myanmar provides a further example of methods of warfare comparable, in effects, if not in tactics, to various components of siege operations. This is particularly apparent in Rakhine State, where humanitarian aid has reached only one-fourth of the people in need (i.e., 231,578 out of 873,056).<sup>102</sup> In the armed conflict against the Arakan Army, the Myanmar Armed Forces have resorted to the 'four-cuts' strategy, described by the Office of the United Nations High Commissioner on Human Rights (OHCHR) as including 'indiscriminate deployment of airstrikes and artillery shelling, mass burnings of villages to displace civilian populations, and denial of humanitarian access'.<sup>103</sup> Since November 2023, the military has placed severe restrictions on the ability of humanitarian organizations to access communities in need. Measures have included the adoption of legislative measures imposing cumbersome procedures for – where not altogether preventing – the delivery of humanitarian aid.<sup>104</sup> Furthermore, since February 2024, the Government of Myanmar has stopped issuing almost all travel authorizations to contested or rebel-controlled territory (most of which are in Northern Rakhine).<sup>105</sup>

## PART 2: RESPONSES AT THE INTERNATIONAL LEVEL

As set out above, the humanitarian consequences for civilians affected by siege-like operations are broad-reaching and severe, with food insecurity, at times reaching the levels of famine, one of the common outcomes. While armed conflict inevitably is accompanied by negative impacts on civilians, the extent of suffering due to food insecurity resulting from the use of siege-like tactics is linked to faulty compliance with the applicable rules of IHL. Whereas the oft-referred to 'Achilles heel' of IHL is the absence of effective monitoring and enforcement mechanisms at the international level,<sup>106</sup> relevant matters have increasingly been present on the international agenda, with the aim of identifying ways to mitigate the worst impacts of conflict.

### 2.1 UNITED NATIONS SECURITY COUNCIL

In recent years, the UNSC has repeatedly addressed situations of concern involving conflict-related food insecurity, noting the threat posed by the disregard of IHL obligations in such contexts. On 24 May 2018, the Council unanimously passed Resolution 2417 (2018) acknowledging a direct link between war, conflict-induced food insecurity and the risk of famine, and underscoring the unlawfulness of the use of starvation of civilians as a method of warfare.<sup>107</sup> It also made a link between the unlawful denial of

97 UN, 'Statement Attributable to the Spokesperson for the Secretary-General on the Lachin Corridor [Armenia-Azerbaijan]', 2 August 2023.

98 ICRC, 'Operational Update on ICRC's Work Across the Lachin Corridor', 18 August 2023; Foreign Ministry of Armenia, 'MFA Statement on the Humanitarian Situation in Nagorno-Karabakh, Which Has Been Under Blockade for 7 Months', 12 July 2023.

99 See Ministry of Foreign Affairs of the Republic of Azerbaijan, 'Commentary on the July 25 Statement of the International Committee of the Red Cross Regarding the Humanitarian Situation in the Region', Press Release no 404/23, 25 July 2023, as well as 'Statement of the Ministry of Foreign Affairs of the Republic of Azerbaijan', Press Release no 434/23, 14 August 2023, for the Azerbaijani offer to provide food, fuel and other essential supplies using the Aghdam-Khankendi road through the ICRC. See Foreign Ministry of Armenia, 'Speech of Minister of Foreign Affairs of Armenia at the UN Security Council Urgent Meeting', 16 August 2023, as well as 'Deputy Foreign Minister of Armenia Vahe Gevorgyan Participated in and Delivered Remarks at the "Famine and Conflict-Induced Global Food Insecurity" UN Security Council Open Debate', 3 August 2023, for the Armenian humanitarian convoy sent by Armenia, which remained blocked at the entrance of the Lachin Corridor.

100 Ministry of Foreign Affairs of the Republic of Azerbaijan, 'Press Release on the Briefing for the Diplomatic Corps Accredited in the Republic of Azerbaijan on the Latest Situation in the Region', Press Release no 503/23, 18 September 2023.

101 UN doc SC/15418, 'Latest Clash between Armenia, Azerbaijan Undermines Prospects of Peace, Speakers Warn Security Council, Calling for Genuine Dialogue to Settle Outstanding Issues', 21 September 2023.

102 See Humanitarian Action, Humanitarian Response Plan: Myanmar, 2024, <https://humanitarianaction.info/plan/1160/ge/7276#page-title> (last accessed 15 October 2024).

103 OHCHR Myanmar, 'Situation of Human Rights in Myanmar', March 2023. See also Ant Pweh Aung, 'Rakhine IDPs Caught in the Conflict and Cut Off from Aid', *Frontier Magazine*, 4 April 2024.

104 See especially arts 28(m) and 38(a)-(b) of Myanmar, State Administration Council Law no 46/2022 5th Waxing of Tazaungmone 1384 ME, 28 October 2022 – reprinted as annex to International Commission of Jurists, 'Myanmar State Administration Council Organization Registration Law 2022: Legal Briefing', November 2022.

105 Mitsanas et al, 'Are We Not Eating Tonight?', supra fn 26.

106 Mechanisms enshrined in different treaties to oversee the implementation of IHL have only rarely been activated. On the system of protecting powers (resorted to five times since 1949) and the formal enquiry procedure (which has not been launched since 1929), see ICRC, *Commentary on the Third Geneva Convention: Convention (III) Relative to the Treatment of Prisoners of War*, 2nd ed. (Geneva, 2020), paras 1297-1302 and 5331-5336 respectively, as well as Jelena Pejic, 'Strengthening Compliance with IHL: the ICRC-Swiss Initiative', 98 *IRRC* (2016) 319-320. The International Humanitarian Fact-Finding Commission, established by Additional Protocol I, has only been activated once (see IHFFC, 'OSCE Special Monitoring Mission Was Not Targeted, Concludes Independent Forensic Investigation Into Tragic Incident of 23 April 2017', 7 September 2017).

107 UN doc S/RES/2417 (2018), para 1.

access to humanitarian assistance to civilians in armed conflict and possible threats to international peace and security,<sup>108</sup> and expressed its willingness to consider cases of unlawful denial of humanitarian access in violation of international law where such denial may constitute a threat to international peace and security and adopt ‘appropriate steps’ in response.<sup>109</sup> The Council further urged all parties ‘to protect civilian infrastructure which is critical to the delivery of humanitarian aid and to ensure the proper functioning of food systems and markets in situations of armed conflict’.<sup>110</sup>

In 2021, in its Resolution 2573, the Council reiterated its condemnation of the use of starvation of civilians as a method of warfare in a number of armed conflict situations and the unlawful denial of humanitarian access.<sup>111</sup> It condemned attacks resulting in the deprivation of the civilian population of objects indispensable to their survival, as flagrant violations of international humanitarian law, deplored the long-term humanitarian consequences of such attacks for the civilian population while demanding that all parties to armed conflict immediately put an end to such practices.<sup>112</sup> It further urged all parties to armed conflict to protect civilian infrastructure that is critical, among others, to ensuring the proper functioning of food systems and markets during armed conflicts.<sup>113</sup>

The Security Council has also taken measures in response to humanitarian challenges arising in the context of specific conflict situations. For example, three years into the Syrian war, in Resolution 2165 (2014) the Council determined that the deteriorating humanitarian situation constituted a threat to peace and security in the region. It noted the number of persons in need of humanitarian

assistance as well as those trapped in besieged areas as factors pertinent to the deterioration of the humanitarian situation. It further referenced widespread violations of IHL, including indiscriminate attacks; the targeting of civilian infrastructure and the use of torture; ill-treatment; sexual and gender-based violence; as well as grave violations and abuses committed against children. It also called out the ‘arbitrary and unjustified withholding of consent to relief operations (...) to destinations within Syria, in particular to besieged and hard-to-reach areas’.<sup>114</sup> In response it created a mechanism that, over the following nine years, enabled the delivery of cross-border humanitarian assistance without requiring the consent of the Syrian government.<sup>115</sup>

More recently, in relation to the situation in Gaza, the Council passed multiple resolutions addressing the need for compliance by parties to the conflict with their obligations under IHL, ‘including with regard to the conduct of hostilities and the protection of civilians and civilian objects, humanitarian access, and the protection of humanitarian personnel and their freedom of movement, and the duty, as applicable, of ensuring the food and medical supplies’ of the population.<sup>116</sup> It demanded that the parties to the conflict ‘allow, facilitate and enable the immediate, safe and unhindered delivery of humanitarian assistance at scale directly to the Palestinian civilian population throughout the Gaza Strip’.<sup>117</sup> It highlighted the need for ‘continuous, sufficient and unhindered provision of essential goods and services important to the well-being of civilians, especially children, throughout the Gaza Strip, including water, electricity, fuel, food, and medical supplies, as well as emergency repairs to essential infrastructure’.<sup>118</sup>

108 UN doc S/RES/2417 (2018), para 4.

109 Ibid.

110 UN doc S/RES/2417 (2018), para 7.

111 UN doc S/RES/2573 (2021), paras 4 and 5.

112 UN doc S/RES/2573 (2021), para 1.

113 UN doc S/RES/2573 (2021), para 6.

114 UN doc S/RES/2165 (2014), Preamble.

115 Karin Landgren, Gaurav Redhal, Paul Romita and Shamala Kandiah Thompson, ‘[The Demise of the Syria Cross-Border Aid Mechanism](#)’, *Lawfare*, 23 August 2023. Specifically, Resolution 2165 authorized UN humanitarian agencies ‘to use routes across conflict lines and the border crossings of Bab al-Salam, Bab al-Hawa, Al Yarubiyah and Al-Ramtha (...) in order to ensure that humanitarian assistance, including medical and surgical supplies, reaches people in need throughout Syria through the most direct routes’; see UN doc S/RES/2165 (2014), 14 July 2014, para 2.

116 UN doc S/RES/2728 (2023), para 1.

117 UN doc S/RES/2728 (2023), para 2. See also UN doc S/RES/2728 (2024), para 2; UN doc S/RES/2735 (2024), para 2(a).

118 UN doc S/RES/2712 (2023), para 2.

In June 2024, against an imminent risk of famine in Darfur,<sup>119</sup> the Council adopted Resolution 2736 (2024).<sup>120</sup> The Resolution demanded that the RSF halt the siege of El Fasher,<sup>121</sup> that civilians wishing to relocate out of El Fasher to safer areas be permitted to do so,<sup>122</sup> and the ‘rapid, safe and unhindered’ passage of humanitarian relief.<sup>123</sup>

#### INCREASED MULTILATERAL ACKNOWLEDGEMENT OF THE LINKS BETWEEN FOOD INSECURITY AND ARMED CONFLICT

In 2018, UNSC Resolution 2417 acknowledged the link between armed conflict, conflict-induced food insecurity and the threat of famine, while Resolution 2573 (2021) underscored the need to protect civilian infrastructure critical for the proper functioning of food production and food systems during armed conflicts. In April 2022, Ireland convened an Arria-Formula meeting on conflict and hunger where it highlighted the transboundary impact of armed conflict on food insecurity.<sup>124</sup> Open debates at the Security Council level were also held (in March 2021, May 2022 and August 2023). Other parts of the multilateral system have likewise engaged on the issue. In January 2020, the UN General Assembly adopted Resolution 74/149 on the right to food, which noted that ‘armed conflicts (...) are among the factors causing or exacerbating famine and severe food insecurity’.<sup>125</sup> In December 2022 the UN Special Rapporteur on the Right to Food dedicated his report to the Human Rights Council to conflict and the right to food (A/HRC/52/40) where he called for accountability in cases of food-related war crimes, and the spillover consequences for food insecurity in conflict regions and beyond. In 2023, for the first time in his report on the protection of civilians in armed conflict to the Security Council, the Secretary-General included a detailed section on the impact of armed conflict on food security.<sup>126</sup>

## 2.2 INTERNATIONAL JUDICIAL AND INVESTIGATIVE MECHANISMS

In recent years, questions related to food insecurity resulting from armed conflict, including siege-like situations, have been tackled by international courts as well as UN-mandated investigative mechanisms. Considering the dearth of international jurisprudence pertaining to the use of starvation of civilians as a method of warfare and related questions of international law, this is an encouraging development.

The International Court of Justice (ICJ) has been called upon to address several situations where the conduct of parties to armed conflicts was threatening the food security of civilian populations. In the pending cases between Armenia and Azerbaijan on the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination*, the ICJ has been asked to indicate several provisional measures in relation to the ‘closure’ of the Lachin corridor<sup>127</sup> and, on 22 February 2023, the Court ordered that Azerbaijan ‘shall take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along [the Lachin corridor] in both directions’.<sup>128</sup> In the context of the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, the ICJ has been asked to indicate provisional measures in connection with the hostilities in the Gaza Strip and, more particularly, with the ‘complete siege’ thereof imposed by Israel. Having acknowledged ‘the unprecedented levels of food insecurity experienced by Palestinians in the Gaza Strip over recent

119 UN doc S/RES/2736 (2024), 13 June 2024, Preamble.

120 UN, [‘Adopting Resolution 2736 \(2024\) with 14 Votes in Favour, Russian Federation Abstaining, Security Council Demands Rapid Support Forces Halt Siege of El Fasher, Sudan’](#), Press Release SC/15728, 13 June 2024.

121 UN doc S/RES/2736 (2024), para 1.

122 UN doc S/RES/2736 (2024), para 2. In her explanation of vote, the U.S. representative to the UN hinted at the precedent set by the Syria aid mechanism when she mentioned that, should the parties fail to facilitate the passage of humanitarian aid in violation of IHL, the Security Council ‘should take action to ensure life-saving aid is delivered and distributed, by considering all tools at its disposal, including authorizing aid to move from neighboring countries’: see United States Mission to the United Nations, [‘Explanation of Vote Delivered by Ambassador Linda Thomas-Greenfield on a UN Security Council Resolution on El Fasher, Sudan’](#), 13 June 2024.

123 UN doc S/RES/2736 (2024), para 3.

124 At this occasion, the UN Special Rapporteur on the Right to Food underlined that increased hunger leads to armed conflicts and that, in turn, armed conflicts increase hunger and, therefore, should be addressed in terms of peace and security; Permanent Mission of Ireland to the United Nations, New York, ‘Statement at the Arria-Formula Meeting on Conflict and Hunger’, 21 April 2022, <https://www.ireland.ie/en/un/newyork/news-and-speeches/security-council-statements/statement-at-the-arria-formula-meeting-on-conflict-and-hunger/>, last accessed 15 October 2024.

125 UN doc A/RES/74/149, 24 January 2020, Preamble.

126 Report of the Secretary-General, on Protection of Civilians in Armed Conflict, UN doc [S/2023/345](#), 12 May 2023.

127 See [Application of the International Convention on the Elimination of All Forms of Racial Discrimination \(Armenia v Azerbaijan\)](#) and [Application of the International Convention on the Elimination of All Forms of Racial Discrimination \(Azerbaijan v Armenia\)](#).

128 ICJ, [Application of the International Convention on the Elimination of All Forms of Racial Discrimination \(Armenia v Azerbaijan\)](#), Provisional Measures, [Order of 22 February 2023](#), I.C.J. Reports 2023, §67. See also ICJ, [Application of the International Convention on the Elimination of All Forms of Racial Discrimination \(Armenia v Azerbaijan\)](#), Provisional Measures, [Order of 6 July 2023](#), where the Court rejected Armenia’s request to modify the Order of 22 February 2023 and reaffirmed its earlier measure (ibid, §33).



weeks, as well as the increasing risks of epidemics',<sup>129</sup> the ICJ has ordered that Israel shall 'take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance',<sup>130</sup> 'increas[e] the capacity and number of land crossing points and maintain them open for as long as necessary'.<sup>131</sup> In its subsequent order of 28 March 2024, the Court has gone further, ordering not only that Israel '[m]aintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance',<sup>132</sup> but also that it '[i]mmediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part'.<sup>133</sup>

The International Criminal Court (ICC) has similarly engaged with addressing the alleged commission of war crimes affecting the food security of the civilian population, particularly in besieged areas. Already in its original formulation entered into force in 2002, the Rome Statute included the war crime of '[i]ntentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions', when committed during international armed conflict.<sup>134</sup> In 2019, the Assembly of States Parties to the Rome Statute adopted an amendment recognizing the intentional starvation of civilians as a war crime also in non-international armed conflicts.<sup>135</sup> In May 2024, the Office of the Prosecutor of the ICC filed applications for arrest

warrants in the situation in the State of Palestine against the Prime Minister and the Minister of Defence of the State of Israel, among others, for the war crime of starvation of civilians as a method of warfare and the crime against humanity of extermination and/or murder, including in the context of deaths caused by starvation.<sup>136</sup> According to the Prosecutor, the evidence revealed that 'Israel has intentionally and systematically deprived the civilian population in all parts of Gaza of objects indispensable to human survival (...) through the imposition of a total siege', by closing border crossing points, arbitrarily restricting the transfer of essential supplies, cutting off cross-border water pipelines and hindering electricity supplies.<sup>137</sup> The application, backed by a panel of independent experts<sup>138</sup> but challenged by Israel,<sup>139</sup> is pending before the Pre-Trial Chamber of the ICC.

#### UNITED NATIONS-MANDATED INVESTIGATIVE BODIES

Over the past few years, investigative bodies (such as commissions of inquiry and fact-finding commissions) have dedicated growing attention to the issue of food security, sieges and the use of starvation as a method of warfare. These bodies (often mandated by the Human Rights Council to inquire into violations of international humanitarian law and human rights law in situations of armed conflict) have analysed the topic not only in their periodic reporting, but also in dedicated papers and studies.

In 2018, the **Independent International Commission of Inquiry on the Syrian Arab Republic** published a policy paper titled 'Sieges as a Weapon of War: Encircle, Starve, Surrender, Evacuate'. According to the Commission, '[t]he methods employed in Syria to carry out sieges, as documented by the Commission since 2012 (...) have amounted to egregious violations of international human rights and humanitarian law and, in some instances,

129 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, [Order of 28 March 2024](#), §31; see also *ibid*, §21 (whereby 'Palestinians in Gaza are no longer facing only a risk of famine, as noted in the Order of 26 January 2024, but that famine is setting in').

130 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, [Order of 26 January 2024](#), §86(4).

131 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, [Order of 28 March 2024](#), §51(2)(a).

132 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, [Order of 24 May 2024](#), §57(2)(b).

133 *Ibid*, §57(2)(a). The Court had previously found that 'the humanitarian situation [in the Gaza Strip] is now to be characterized as disastrous' (*ibid*, §28) and concluded that it was 'not convinced that the evacuation efforts and related measures that Israel affirms to have undertaken to enhance the security of civilians in the Gaza Strip, and in particular those recently displaced from the Rafah Governorate, are sufficient to alleviate the immense risk to which the Palestinian population is exposed as a result of the military offensive in Rafah' (*ibid*, §46).

134 Art 8(2)(b)(xxv) of the [Rome Statute of the International Criminal Court](#).

135 [C.N.394.2020.TREATIES-XVIII.10.g](#), 6 December 2019. As per art 121(5) of the Rome Statute, the amendment 'shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance'. This presently is the case for 13 states, while another four states have accepted or ratified the amendment but the year has not yet passed (see UN Treaty Collection, ['10. g Amendment to article 8 of the Rome Statute of the International Criminal Court \(Intentionally using starvation of civilians\)'](#)), Assembly of State Parties to the Rome Statute of the International Criminal Court, Resolution ICC-ASP/18/Res.5, 6 December 2019. The amendment entered into force on 14 October 2021.

136 ICC, ['Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine'](#), 20 May 2024.

137 *Ibid*.

138 Panel of Experts in International Law Convened by the Prosecutor of the International Criminal Court, ['Report of the Panel of Experts in International Law'](#), 20 May 2024.

139 Agence France-Presse in Jerusalem, ['Israel "Challenges" International Criminal Court Bid for Netanyahu Arrest Warrant'](#), 20 September 2024.

to war crimes'.<sup>140</sup> In the Commission's view, the ways in which sieges had been carried out during the Syrian Civil War entailed 'collective punishment through denial of freedom of movement, indiscriminate bombardment, denial of access to humanitarian aid, food, water, and medicine, prevention of leaving, and forced displacement'.<sup>141</sup> On this basis, the Commission called on all parties to the armed conflict to '[i]mmediately lift all remaining sieges'.<sup>142</sup>

At around the same time, the **Group of Eminent International and Regional Experts on Yemen** addressed the naval and air restrictions imposed by the Government of Yemen and the Coalition to Restore Legitimacy, arguing that these operations amount to 'attacks' to which the principle of proportionality applies.<sup>143</sup> The Group of Experts further analysed siege operations in Ta'izz, Hajjah and al-Durayhimi.<sup>144</sup> Emphasizing the need to consider the effects of blockades, sieges and siege-like warfare to determine their legality,<sup>145</sup> the Group hinted at the applicability of the principle of proportionality also in relation to siege-like warfare.<sup>146</sup> The restrictions were also analysed (although with no definitive conclusions) from the perspective of the prohibition on collective punishment and of the obligation to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.<sup>147</sup>

Further insights on the topic were elaborated by the **Commission on Human Rights in South Sudan**. Already in 2019, this Commission had documented conduct by both the Sudanese Armed Forces and the Sudan's People Liberation Army in Opposition that, in the view of the Commission, may have breached the prohibition on starving civilians as a method of warfare.<sup>148</sup> The following year, the Commission published a conference room paper, in which it highlighted how recourse to starvation of the civilian population as a method of warfare by both parties to the conflict had contributed to food insecurity in several states of South Sudan.<sup>149</sup>

The most recent articulations of this reflection are to be found in the work of the **Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel**. In its first report following the attack of 7 October 2023, the Commission looked at the complete siege on the Gaza Strip from four angles. The Commission concluded that by cutting off essential resources and the movement of goods, Israel was using 'starvation as a method of war, affecting the entire population of the Gaza Strip for decades to come',<sup>150</sup> as well as 'collective punishment of the entire population [of Gaza] for the actions of a few, a clear violation of IHL'.<sup>151</sup> The siege was also one of the elements found to

'have had a disproportionate impact on groups in vulnerable situations (...) including children and newborns, older persons, persons with disabilities, female-headed households and widows, mothers of young children, and pregnant and lactating women'.<sup>152</sup> Finally, the siege was analysed from the viewpoint of international human rights law, with the finding that it has 'resulted in the IHRL violations of the rights to family life, adequate food, housing, education, health, social security, and water and sanitation, particularly impacting children and persons in vulnerable situations'.<sup>153</sup>

## 2.3 WAYS FORWARD TOWARDS IMPROVED COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW

The increased attention to conflict-related food insecurity, including when linked to sieges and siege-like operations, on the part of the UNSC and other UN organs, mechanisms and entities as well as international tribunals and investigative bodies is a welcome development.

Through the recognition of the link between armed conflict and violence and conflict-induced food insecurity and the threat of famine, the Security Council centred the importance of compliance with IHL obligations with the aim of tackling the humanitarian challenges and providing effective responses. Importantly, the Council noted the potential of unlawful denial of humanitarian access in such contexts constituting a threat to international peace and security, which would engage the Council as the main UN organ mandated under the UN Charter to address matters related to the maintenance of international peace and security. In relation to specific conflict situations, the Council has found that the critical humanitarian situation may amount to a threat to peace and security.

140 Independent International Commission of Inquiry on the Syrian Arab Republic, '[Sieges as a Weapon of War: Encircle, Starve, Surrender, Evacuate](#)', 29 May 2018, para 4.

141 Ibid, para 26.

142 Ibid.

143 Group of Eminent International and Regional Experts on Yemen, UN doc [A/HRC/39/43](#), 17 August 2018, Annex II, paras 1–31.

144 Group of Eminent International and Regional Experts on Yemen, UN doc [A/HRC/42/CRP.1](#), 3 September 2019, paras 300–370 (Ta'izz), paras 460–469 (Hajjah) and paras 503–515 (al-Durayhimi district).

145 Ibid, para 777.

146 Ibid, paras 746 and 778.

147 Ibid, paras 780–781.

148 UN doc [A/HRC/40/CRP.1](#), 'Report of the Commission on Human Rights in South Sudan', 21 February 2019, *passim*.

149 UN doc [A/HRC/45/CRP.3](#), Conference Room Paper of the Commission on Human Rights in South Sudan, "'There is Nothing Left for Us": Starvation as a Method of Warfare in South Sudan', 5 October 2020, para 6.

150 UN doc [A/HRC/56/26](#), 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel', 27 May 2024, para 102; see also *ibid*, para 81.

151 Ibid, para 50; see also *ibid*, para 82.

152 Ibid, para 55.

153 Ibid, para 85.

More granular attention to relevant questions on the part of judicial mechanisms and investigative bodies contributes to increased protection and guidance on the interpretation of the scope and content of applicable legal obligations as well as good practices to be considered by the stakeholders concerned.

At the same time, the role of the Security Council and that of international judicial bodies have their own limitations. The Council may be plagued by politicization which can and has undermined its effectiveness in certain situations. Judicial processes, on the other hand, can be slow and decisions of international courts have at times been proven difficult to enforce due to the lack of a centralized enforcement mechanism. Nonetheless, continuous engagement of judicial mechanisms with duty bearers contributes to sustained pressure to bring about improved compliance.<sup>154</sup> These shortcomings highlight the importance of additional approaches aimed at facilitating IHL compliance, including through tailored practical guidance, focused awareness-raising, and twinned with targeted advocacy on the part of humanitarian actors. Having clearly set out legal benchmarks upon which to measure the conduct of parties to the armed conflict has never been more important. They provide a context for advocacy, action by relevant stakeholders, including the Security Council, and set the stage for future accountability.

### PART 3: WHEN CONFLICT-INDUCED FOOD INSECURITY TRANSCENDS BOUNDARIES

The effects of sieges, blockades and siege-like warfare have at times been shown to transcend the temporal and geographic limits of the relevant operations. Besieged civilians may be severely affected by the *direct* effects of these methods of warfare – they may suffer harm from shelling or bombardments, be deprived of objects indispensable to their survival, or be constrained in their freedom of movement. All these occurrences, frequent if not inherent to siege warfare, may amount to or constitute elements of IHL violations. However, when it comes to the issue of food security, the *long-term* effects of sieges, blockades and siege-like warfare are equally (if not more) serious. Siege operations may affect the efficiency and sustainability of food systems, which may impact the health and wellbeing of civilian populations well after military operations have come to an end.

Once more, contemporary armed conflicts provide several elements demonstrating the above. The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel has found that the siege imposed on the whole of the Gaza Strip is ‘affecting the entire population of the Gaza Strip for *decades to come*, with particularly negative consequences for children’.<sup>155</sup> The Commission on Human Rights in South Sudan has ‘note[d] with concern that the timing of certain attacks and seasonality of organised violence during planting and harvest periods exacerbated the situation and led to additional months of food insecurity’.<sup>156</sup> In relation to the armed conflict in Sudan, while demanding that the Rapid Support Forces halt the siege of El Fasher in Sudan, the UNSC has called for the parties to the conflict ‘to withdraw fighters as necessary to enable agricultural activities throughout the planting season to avoid compounding the risk of famine’.<sup>157</sup> Finally, pertaining to the situation in Burkina Faso, Amnesty International has highlighted that ‘[p]rohibitions from farming and grazing which affects livelihoods systems, in areas that are essentially rural, together with the control

<sup>154</sup> In this regard, the ICJ, ordering Israel to submit open reports to the Court on measures taken to give effect to the provisional measures ordered, has furthered the transparency of the process and informed the international discourse on matters related to the provisional measures ordered and Israel's response.

<sup>155</sup> UN doc [A/HRC/56/26](#), ‘Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel’, 27 May 2024, para 102 (emphasis added).

<sup>156</sup> UN doc [A/HRC/45/CRP.3](#), Conference Room Paper of the Commission on Human Rights in South Sudan, ‘“There is Nothing Left for Us”: Starvation as a Method of Warfare in South Sudan’, 5 October 2020, para 9.

<sup>157</sup> UN doc [S/RES/2736 \(2024\)](#), 13 June 2024, para 3.

of major roads and the attacks on supply convoys by armed groups, affect food security and often lead to the mass displacement of residents to areas that are not under siege by armed groups'.<sup>158</sup> In all these instances, the food security of the civilian population is negatively affected by the conduct of the besieging forces with implications pointing beyond the timeframe of the military operations: by preventing activities that are necessary to sustain the food production cycle of communities affected by military operations, they set the conditions for food insecurity in the not-too-distant future.

With food insecurity being a recognized driver of conflict, these developments may further trigger a vicious cycle of insecurity and violence.<sup>159</sup> When food insecurity coexists with other phenomena, such as pre-existing water scarcity or conflict-created environmental externalities such as those resulting from the targeting of farmlands, storage facilities and processing infrastructure, these 'risks increase exponentially'.<sup>160</sup>

Another related but underexplored phenomenon is when conflict-rendered food insecurity is then 'exported via the globalized food system in the form of price shocks and reduced supply'.<sup>161</sup> As the research by Harper and Lin demonstrates, armed conflicts in the territory of food-producing states (such as Ukraine following the full-scale invasion by the Russian Federation in 2022, or Myanmar following the military's declaration of a state of emergency rule in February 2021) both trigger an increase in retail prices and correlate with general food price inflation, with knock-on effects on the food security of third countries.<sup>162</sup>

## TRANSBOUNDARY EFFECTS OF FOOD INSECURITY

'[P]rior to 2022 Ukraine played a key role in the global food market, feeding roughly 400 million people annually, mostly from food insecure countries. For example, it was the world's fifth largest exporter of wheat, with a distribution of 19 million metric tonnes in the 2021-2022 market year, including to Egypt, Nigeria and Ethiopia. Within a year of Russia's invasion, however, 30 percent of Ukraine's land and 13,500 square kilometers of waterways had been destroyed or contaminated [by land and naval mines]. The country's agricultural export value contracted 15 percent, with wheat exports hit especially hard, declining 30 percent to a record low of 13.5 million metric tonnes.

In the months following February 2022, wheat flour retail prices had increased across all five of Ukraine's top importers; Ethiopia experienced the most severe price percentage fluctuation at 48 percent in April 2022. These shifts in price also correlated with general food price inflation. In Egypt, for example, the price of food increased around 12 percent during the same period. Price hikes also correlated with attacks on environmental assets and political back-steps. On 17 May 2022, the day the third round of Russo-Ukrainian talks failed, the International Grains Council wheat sub-index hit a peak of 399.7. Likewise, the bombing of the Nova Kakhova dam on [6] June 2023, which destroyed 4 billion tonnes of grain and food oil crops, coincided with same-day spike in the global price of wheat by 0.59 percent from USD636.25/Bu to USD 640/Bu.

A similar story played out in Myanmar following the military's declaration of a state of emergency rule in February 2021. By December that year, the value of Myanmar's rice exports had fallen to USD702 million (from 5.87 to 3.5 percent of total exports). This triggered an increase in the retail price of rice both in Myanmar and its main trade partners. Again, this correlated tentatively with generalized food price inflation (including in Malaysia and Madagascar) and with an increase in moderate-severe food insecurity (including in the Philippines, Malaysia, Madagascar and Senegal).<sup>1</sup>

Reproduced from: [Junli Lim and Erica Harper, 'Unpacking the Burgeoning Challenge of Environmental Protection and the Right to Food in the Context of Armed Conflict'](#), p 1 Geneva Academy/Rosa Luxemburg Stiftung Research Brief, April 2024

The question of linkages requires further exploration, including statistical analysis, to confirm the extent to which these transboundary outcomes can be directly attributed to the conflict vis-à-vis other economic and production factors. It is clear, however, that in today's globalized and integrated economy, conflict cannot be seen as affecting only the parties

158 Amnesty International, 'Burkina Faso', supra fn 25, p 29. In this sense, see also *The New Humanitarian*, '[To End the Siege on my Burkinabè Town, We Must Open a Dialogue with the Jihadists](#)', supra fn 25, whereby 'herders have no place to graze their flocks because everything is blocked. Farmers also cannot go out to cultivate.'

159 Vision of Humanity, 2023 Ecological Threat Report, <https://www.visionofhumanity.org/maps/ecological-threat-report/#/> (last accessed 15 October 2024). See, generally, W. Zartman, 'Need, Creed and Greed in Intrastate Conflict', in C. Aronson and W. Zartman (eds), *Rethinking the Economics of War: The Intersection of Need, Creed and Greed*, Woodrow Wilson Centre Press, 2005, p 95; J. Weinstein, 'Resources and the Information Problem in Rebel Recruitment', 49 *Journal of Conflict Research* (2005) 598-624; P. Collier and A. Hoeffler, 'On Economic Causes of Civil War', 50 *Oxford Economic Papers* (1998) 563; P. Collier and A. Hoeffler, 'Greed and Grievance in Civil War', 56 *Oxford Economic Papers* (2004) 563; P. Regan and D. Norton, 'Greed, Grievance, and Mobilization in Civil Wars', 49(3) *Journal of Conflict Resolution* (2005) 319-336.

160 Junli Lim and Erica Harper, '[Unpacking the Burgeoning Challenge of Environmental Protection and the Right to Food in the Context of Armed Conflict](#)', Geneva Academy/Rosa Luxemburg Stiftung Research Brief, April 2024, also quoting UN doc E/2016/58, '[Early Warning and Economic, Social and Cultural Rights – Report of the United Nations High Commissioner for Human Rights](#)', 13 May 2016.

161 Lim and Harper, '[Unpacking the Burgeoning Challenge of Environmental Protection and the Right to Food in the Context of Armed Conflict](#)', supra fn 160, p 1.

162 Ibid, pp 4-15.

to the conflict. Moreover, the relationship between conflict, food production and environmental externalities must be understood, not only in a short-term and existential sense, but also as an early warning signal that food insecurity could worsen in countries geographically and politically removed from the battlefield.

Additional analysis is even more important considering that relevant implications would not be sufficiently addressed under IHL (or even international human rights law). In the context of the conduct of hostilities, incidental harm that is foreseeable must be considered in proportionality assessments and factored in in terms of precautionary measures,<sup>163</sup> with these assessments being complementary. In relation to the environmental impact of attacks, a '[l]ack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking (...) precautions'.<sup>164</sup> To the extent an internationally wrongful act has been committed, affected states that are not parties to the conflict in question may qualify as injured parties by virtue of the unlawful impact of relevant conduct on their territory and population. Moreover, third states, even if not injured, may have a legal interest in compliance with norms of IHL by reason of the importance for the international community of the obligations involved. At the same time, long-term as well as long-range (such as transboundary) incidental effects may be more difficult to anticipate. In this respect, further research and analysis may contribute to an evolved understanding of pertinent issues on part of relevant stakeholders, including parties to the conflict.

Indeed, the breadth of impact further warrants an exploration of ways in which such situations may engage international and regional peace and security considerations. The potential for severe food insecurity to pose a threat to peace and security has been recognized. At the same time, the Council has not specifically tackled the linkages between the transboundary effects of conflict-induced food insecurity and threats to international and/or regional peace and security. On the other hand, in the context of pandemics caused by the Ebola and COVID-19 viruses, the

Security Council has taken action on the basis of the impact of these situations on international peace and security. Specifically, in its resolution addressing the threat posed by the Ebola virus in West Africa, the Council determined that 'the unprecedented extent of the Ebola outbreak in Africa constitute[d] a threat to international peace and security'.<sup>165</sup> Pertaining to the COVID-19 pandemic, the Council noted that 'the unprecedented extent of the COVID-19 pandemic [was] likely to endanger the maintenance of international peace and security'.<sup>166</sup> Similarly, in connection with long-term or transboundary effects of conflict-related food insecurity, the risk of relevant implications causing or contributing to threats to peace and security is poignant. As such, relevant developments may, under certain circumstances, warrant consideration by the Security Council. In any case, the far-reaching nature of potential impact has considerable, but underexplored, implications for both law and policy.

#### UN SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD HIGHLIGHTS THE TRANSBOUNDARY IMPLICATIONS OF CONFLICT-INDUCED FOOD INSECURITY

In 2022, in his report to the Human Rights Council, the UN Special Rapporteur on the Right to Food highlighted that the international legal framework was insufficient to address the environmental harms that drive long-term food insecurity, particularly as an effect beyond a theatre of combat.<sup>167</sup> In stressing the need for accountability for food-related war crimes, he also called on the international community to address the 'pressing structural reasons leading to widespread severe violations of the right to food in conflict regions and beyond'.

His report submitted to the 79<sup>th</sup> session of the UN General Assembly addresses starvation and the right to food, with an emphasis on the Palestinian people's food sovereignty ([A/79/171](#)).

163 ICRC, '[International Humanitarian Law and the Challenges of Contemporary Armed Conflicts](#)', 2019, p 17.

164 See Rule 44 in the ICRC's Customary IHL Database and related commentary, *supra* fn 18.

165 UN doc S/RES/2177 (2014).

166 UN doc S/RES/2532 (2020) and UN doc S/RES/2565 (2021).

167 Report of the UN Special Rapporteur on the Right to Food, Michael Fakhri, on conflict and the right to food, UN doc [A/HRC/52/40](#), 29 December 2022.

## PART 4: CONCLUSIONS

The use of sieges, encirclements and siege-like tactics continues to be a common feature of modern warfare. Whereas such tactics are not in and of themselves prohibited under IHL, information available demonstrates that relevant operations frequently cause far-reaching negative impacts on the civilian population and raise serious concerns regarding their compliance with IHL. As such, efforts towards ensuring that, when resorted to, sieges and siege-like tactics are carried out in accordance with applicable rules of IHL are of critical importance.

This report has focused on the rules of IHL most commonly engaged in this context, such as those governing the conduct of hostilities, including the prohibition on the use of starvation of civilians as a method of warfare and to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population. It has further addressed rules regulating the provision of humanitarian relief to civilian populations in need and those pertaining to the removal of civilians from besieged areas through evacuation or by facilitating the voluntary departure of those wishing to leave. If sieges, encirclements and siege-like tactics were to be carried out while respecting these rules, at least the most dire humanitarian consequences, including extreme food insecurity, famine or starvation, could be prevented or duly mitigated.

The situations explored in this report, in which civilians have been exposed to food insecurity in the context of sieges, encirclements and other practices involving cutting off the population from resources, demonstrate a disturbing gap in the comprehensive and effective implementation of IHL; so much so that, in some cases where widespread concerns about IHL compliance had been documented, besieging parties have been called upon to cease relevant operations or to altogether lift the siege or siege-like measures. These shortcomings highlight the importance of identifying and implementing effective measures to facilitate compliance with IHL. Avenues to further such efforts include awareness raising and humanitarian advocacy. Awareness raising on the part of relevant stakeholders (including state authorities and non-state armed groups, among others) is most impactful if conducted before situations arise in which food insecurity is triggered through the use of sieges or siege-like tactics. Practical and tailored guidance on the scope of IHL obligations and relevant protections and their

implementation in the context of sieges and encirclements could serve as a useful tool for awareness raising and capacity building, but also to assist advocacy efforts.

The challenges related to gaps in the effective implementation of IHL also highlight the need to find ways to raise the cost of non-compliance for the actors concerned. This comes with challenges inherent in the lack of an effective enforcement mechanism at the international level. However, coherent, principled and non-politicized action on part of relevant UN and regional organs and mechanisms, including, but not limited to, the Security Council, international judicial and quasi-judicial mechanisms, and UN-mandated investigative bodies, would contribute to tackling compliance concerns in a more comprehensive and meaningful manner. The work of the ICC, investigative bodies and domestic courts is further crucial to work towards progress when it comes to accountability related to the types of violations set out in this Spot Report.

Having conflict-related food insecurity on the multilateral agenda has contributed to a better understanding of related humanitarian challenges by key stakeholders at the international, regional and domestic levels (including law and policy makers, humanitarian donors, and so forth). At the same time, relevant discussions frequently focus on the immediate impact of sieges and encirclements because of the dire and at times catastrophic humanitarian implications. However, the geographical and temporal impact of such tactics can be far-reaching and is underexplored despite its clear legal and policy implications. Meaningfully addressing the full scope and impact of food insecurity during armed conflict, including when connected to sieges and the use of siege-like tactics, and developing effective approaches to prevent and tackle relevant challenges would require a comprehensive approach at the international level.

Instances of conflict-related food insecurity and related violations have been recognized as a potential threat to peace and security. Further exploration of the linkages between food insecurity caused by the operations and tactics addressed in this report and threats to peace and security at the regional and international level would provide a better understanding of challenges and potential responses, including at the level of the Security Council.

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