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The Centrality of Human Dignity in the Understanding of International Legal Protections from Starvation

RESEARCH ARTICLE

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ABSTRACT

The deliberate starvation of populations remains a critical issue in numerous conflicts, highlighting the urgent need for this study. States have both positive obligations to protect individuals from starvation and negative obligations to refrain from actions that negatively impact access to life-sustaining supplies like food, water, and medicines. However, the evolution of international legal standards may sometimes be restricted by existing positive law formulations. It is necessary to examine whether existing international law (*lex lata*) already prohibits starvation or if further legal developments (*de lege ferenda*) are needed to fill protection gaps. A recognition of the interconnectedness of international humanitarian law (IHL), human rights law (IHRL), and international criminal law (ICL), and of the demands of protecting human dignity pervading much of international law, can help to identify the full scope of the prohibition of starvation and of the protection from it. Armed conflicts disrupt food security, and while IHL establishes norms to mitigate these impacts, it often allows exceptions that cause harm to human life. This paper advocates for a comprehensive interpretation of IHL norms, incorporating principles of human rights law and international food security law, to protect essential human needs. They can bring to light how some isolated readings of IHL would seem to permit the causation of hunger in ways that are actually forbidden by a systemic interpretation of international law. The safeguarding of food resources and access to adequate survival goods and services, both during and outside of armed conflicts, requires an integrated legal approach. This approach reinforces the importance of human dignity and the protection of fundamental rights, ensuring that legal interpretations do not regress but rather advance the protection of essential human needs.

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INTRODUCTION

There has been an excessively harsh humanitarian crisis faced by Gazans that was caused by the Israeli offensive which took place after the crimes and attacks perpetrated by Hamas on 7 October 2023. Many civilians have suffered severe harm as a consequence of the hostilities, in a crisis characterised by widespread hunger, among other grave deprivations. However, rather than acknowledging the non-instrumentality of human beings flowing from their unconditional dignity, some have defended actions that risk perpetuating and exacerbating the crisis. For instance, White House Coordinator for the Middle East and North Africa Brett Mc Gurck stated that "the surge in humanitarian relief, the surge in fuel, the pause in fighting, will come when hostages are released".[1]

That declaration is problematic for various reasons. Among these reasons is the fact that conditioning access to essential needs on the actions of a third party means that the wellbeing of individuals will be made conditional on factors related to the conduct of third parties, which is contrary to the unconditionality of human dignity and predicates a conditional satisfaction of fundamental needs. This is inconsistent with the fundamental principle that individuals should not be treated as means or instruments to achieve the aims of others in ways that fundamentally affect them. Making the enjoyment of individuals' autonomy and fundamental rights contingent on actions beyond their reasonable control is highly problematic. In this paper, we argue that an examination of the international legal responses to the prohibition of starvation must be undertaken in light of human dignity-centred *pro personae* interpretations i.e., by choosing interpretations that are conducive to the greater protection and promotion of human rights and freedoms, integrating related developments in different branches of international law.

Accordingly, this study does not provide a specialised focus on international humanitarian law (IHL), as this could lead to a fragmented view that neglects how IHL is influenced by other components of the international legal system. It is also important to recognise that other legal regimes have their own rules, which must be respected and are not superseded by IHL.[2] Furthermore, this paper is not a case study of that or other recent conflicts where starvation has regrettably occurred, such as in Ukraine,[3] Gaza, Sudan, and Yemen, among others.[4]

Instead, this paper will explore specifically the issue of starvation from a broader legal perspective.[5] This study is not irrelevant, considering how the practice of *intentionally* starving populations persists in various conflicts[6] and other scenarios, perpetrated both by state and non-state actors.[7] Thus, this study is not merely theoretical; its implications are of significant and urgent importance.

We contend that states have obligations to protect individuals facing starvation even when it is not intentionally caused, as in cases where they are in a guarantor position – such as towards their own populations or those in territories they occupy, among other circumstances. This obligation arises from the duty to respect and uphold human rights, including the rights to food, water, and health, for all human beings in their jurisdiction. In addition to positive duties, i.e., to ensure the provision of essential needs, states are also under a negative obligation to respect or refrain from negatively affecting the accessibility, quality, and availability of essential supplies such as food, water, and medicines. This obligation comes into effect whenever they have control over the impact of those conditions on the ground. The general obligations of states under human rights law encompass both positive and negative duties concerning rights such as the right to food, as indicated by the UN Human Rights Committee.[8] Beyond these legal duties, state agents and combatants, who are moral agents with the power to make decisions impacting the wellbeing of others—especially in situations where starvation is a possibility—are also bound by ethical obligations. As to the ongoing use of appalling tactics contrary to these obligations, Josep Borrell, High Representative of the European Union for Foreign Affairs and Security Policy, asserted that "[h]unger cannot be used as a weapon of war",[9] noting that some famines are "not a natural hazard but a manmade disaster, and it is our moral duty to stop it".[10] While morality is undoubtedly at stake whenever such kinds of famines take place, it is essential to remember that there are also binding legal standards governing this issue.

The tremendous physical and psychological suffering endured by those facing starvation is undeniable. Yet, some authors argue that, in certain circumstances, implementing or permitting starvation may not always be illegal or immoral insofar as a State may deny the entry of humanitarian aid due to the presence of enemy combatants. This, it is argued by some, could potentially hasten the end of the conflict or achieve other aims,[11] thus instrumentalising those affected. However, the acute pain suffered by members of societies affected by combatants' presence, the potential disruption of social ties, the impossibility of pursuing higher-order human goals, and the instrumentalisation of those suffering, cannot be ignored.[12] Intentionally causing people to suffer in order to expedite a conflict is tantamount to treating those persons' lives as less 'worthy' than others and prioritising a swift resolution over the respect of human dignity, which is unacceptable both morally and under human rights law.

The law should progress in ways that bring greater protection to fundamental human needs, rather than regressing in terms of protected and recognised rights.[13] As the Inter-American Court of Human Rights

(hereinafter referred to as IACtHR) indicated in the case of *La Oroya*—a case concerning allegations of severe environmental pollution and its impact on human rights such as the rights to health, food, and water—there is a strong presumption that regressive regulations, and interpretations as we might add, are contrary to human rights law.[14] The evolutionary nature of international human rights law (hereinafter, also IHRL), as identified in both doctrine and case law, supports this view.[15] In addition to human rights law, general international law and IHL—including the Geneva Conventions, its Additional Protocols, and customary law—should also be viewed as 'living instruments' and standards. They should accordingly be understood and applied in the context of contemporary (protective) understandings, circumstances, and needs, including the need to prevent and reduce food insecurity in armed conflict situations.

Legal developments and their implications may be overlooked or deliberately disregarded by legal actors in the pursuit of particular interests. It is therefore essential to examine whether lex lata accommodates the position that starvation is generally and unequivocally prohibited under existing international legal standards and principles, or whether gaps in protection persist.

First, it is important to clarify that case law and treaty law constitute only some of the sources of international law. Their interpretation is subject to change, and may be supplanted by subsequent constructions that are more appropriate or permissible, as illustrated by developments in the field of extraterritorial jurisdiction.[16] Therefore, the fact that a given interpretation promoted in this text has not yet been adopted by states or academics should not be presumed to render it a *lex ferenda* argument. It may be the case that positive law already accommodates such interpretations, and that their absence from prevailing discourse is attributable to policy considerations, conceptual limitations, or other factors. This argument contends that viable and legitimate interpretations may simply have been previously overlooked; rather than proposing interpretations that would fall outside the scope of existing positive law. It is the latter category which properly belongs to the realm of *lex ferenda*.

A human dignity approach[17] offers compelling arguments for the inadmissibility of practices causing starvation, both in situations of armed conflict and beyond. Different regimes of international law contain standards that directly safeguard human dignity and demand its respect, with all such regimes interconnected through the principle of systemic integration. As for IHL, armed conflicts can damage food security by destroying crops, livestock, and other essential resources, while also obstructing access to vital supplies.[18] Although IHL has established norms to mitigate the impact of armed conflicts on these resources, such norms are frequently interpreted as permitting exceptions that, in practice, gravely undermine the wellbeing of affected populations. This paper highlights the significance of the protections offered by IHL, particularly when viewed alongside the extensive array of principles and rules concerning food contained within human rights law, international food security law, and related policy frameworks.

Although these rules belong to different international legal regimes – each serving different, specialised purposes, from the regulation and management of food chains to their protection – they should not be treated as isolated frameworks. Rather, they ought to be understood as converging in their protection of essential human needs, particularly the right to nourishment, and should be interpreted in light of one other where relevant. This is especially pertinent when examining how humanitarian concerns are addressed within IHL, which can be more comprehensively understood through the complementary lens of IHRL. Accordingly, this paper argues that safeguarding safe and adequate food resources, both in situations of armed conflict and in peacetime, necessitates a holistic assessment of the relevant principles and rules within international law. Such an approach reinforces the centrality of nourishment and access to essential goods and services as indispensable to the preservation of human dignity.

1. THE COMMON THREADS AND FOUNDATIONS OF THE INTERNATIONAL PROHIBITION OF STARVATION FROM A HUMAN DIGNITY PERSPECTIVE

This paper opens with a quote intended to illustrate several key points. First, it highlights the claim advanced by some that it is permissible to condition the provision of essential supplies — including food, medicine, and other survival-critical goods — on the conduct of other actors. While multiple rights are implicated in such scenarios, this does not diminish the importance of examining them through the specific lens of starvation. For example, while medical supplies are vital for individuals with particular health needs, conditioning their availability remains fundamentally incompatible with international legal obligations.

The International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (hereinafter referred to as ARSIWA) provide relevant guidance in this regard. Article 50(1)(c) of ARSIWA makes clear that humanitarian obligations are not subject to derogation by way of countermeasures, affirming that such duties are not contingent on reciprocal compliance. This principle is also enshrined in Rule 140 of the International Committee of the Red Cross' (hereinafter referred to as ICRC) rules of customary international humanitarian law, which asserts that "[t]he obligation to

respect and ensure respect for international humanitarian law does not depend on reciprocity".[19]

In this respect, *lex lata* is appropriately constructed. Were humanitarian obligations to be made conditional upon the conduct of other parties, this would enable the instrumentalisation of human beings in efforts to pressure another entity into compliance. This would undermine human dignity insofar as individuals would be treated primarily as a means to an end rather than ends themselves, in Kantian terms.[20] In this light, the opening quote plainly illustrates the illegality of conditioning the provision of essential humanitarian supplies.

Beyond the obligations of IHL, there are other norms that apply irrespective of the existence of armed conflict. These norms are neither restricted by *ratione materiae* limitations nor subject to reciprocity considerations. They seek to ensure that the law remains humane and centred on human beings. As noted, ARSIWA's Article 50(1)(b) and (d) underscores that neither fundamental human rights nor peremptory norms of international law can be affected by countermeasures. We consider that many interpretations of international law are often unnecessarily biased in favour of militaristic considerations that disregard human welfare. Alternative perspectives, prioritising human dignity, require further development. Humanitarian obligations equally cannot be affected by countermeasures, as affirmed by the same provision.

Second, essential goods to which human beings are *entitled* should not be subject to restrictive interpretations that undermine the *effet utile* and *pro personae* principles. Individuals are entitled to the protection of their physical and mental integrity, which necessarily includes the right to access adequate and safe food, water (as integral to the satisfaction of the right to food), and other basic necessities[21] such as, *inter alia,* medicines and oxygen. Morever, individuals are entitled to receive a minimum threshold of these essentials under all circumstances. This minimum that must always be legally respected, protected, and ensured, though it may be higher in certain contexts. According to the Committee on Economic, Social and Cultural Rights, "[e]very State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food [...] to ensure their freedom from hunger" as a matter of priority.[22] The Inter-American Court of Human Rights has similarly recognised that there exists a minimum level of goods that are essential for a dignified life and survival that must always be guaranteed. The Court has referred to "basic goods protected by" the rights to a healthy environment, life, health, food, water, and a dignified existence.[23]

This unconditional minimum threshold refers to nourishment and wellbeing standards that enable human beings to satisfy their basic needs, thereby allowing them to freely pursue other aims and live without anguish, in truly dignified conditions. This right is absolute, and its peremptory nature prevents any conditioning, derogation, or suspension, even in the most extreme circumstances.[24] Indeed, starvation campaigns have been argued to amount to breaches of *jus cogens* norms.[25]

Several regimes of international law can be interpreted as reflecting a common basis for the regulation of rights to food and other essential supplies. These are grounded in the protection of human dignity, which informs standards across different branches of international law. Unlike the right not to be *arbitrarily* deprived of life, which has been interpreted within the framework of IHRL as hinging on the term 'arbitrary' found in human rights provisions condemning deprivations of life, a similar qualification does not apply to the right to access essential nourishment. In the case of the right to life, compliance with IHL is often treated as the determining factor in assessing whether a killing is arbitrary during periods of armed conflict, with IHL operating as a *lex specialis*. However,[26] the right to food and other essential supplies is not similarly conditioned by considerations of arbitrariness.

While, in relation to the right to life, such a formula does appear in provisions as Art. 6.1 of the International Covenant on Civil and Political Rights, it is absent from standards relating to the rights to food, water, and health. There exists an important body of case law on the right to food with ample developments within IHLR. For instance, although the right to food is not explicitly protected by the European Convention on Human Rights (hereinafter referred to as the ECtHR), state obligations to address basic human needs have been indirectly acknowledged in cases such as *Budayeva* and *Others v. Russia*.[27] In this case, the ECtHR held that states must safeguard individuals' lives and health – a duty which may extend to ensuring food security in the context of disasters or armed conflict.[28]

Moreover, in *Yakye Axa Indigenous Community* v. *Paraguay*, the Inter-American Court of Human Rights recognised the link between the right to life, human dignity, and access to essential resources, including food.[29] The Court ruled that states must create conditions that enable marginalised communities to meet their nourishment needs.[30] Additionally, the African Commission on Human and Peoples' Rights (hereinafter referred to as ACHPR), in *SERAC and CESR* v. *Nigeria*, held that a failure to safeguard communities' resources for food production constituted a violation of the African Charter on Human and Peoples' Rights.[31]

Therefore, it cannot be said that IHL provisions ought to be interpreted as restricting or conditioning the right to food. Rather, IHRL may be regarded as the more specialised regime when it comes to regulating of its content and protection. We argue this on the basis that

IHRL sets out, in greater detail and and with greater specificity, the guarantees and elements comprising the rights to food, water, and other essential goods. Their regulation and protection under IHRL also more accurately reflect their foundation in the protection of human dignity and autonomy. This implies that turning to IHRL allows for a better understanding of the meaning and scope of these rights, including their expression within other regimes of international law.

Moreover, it is inadequate to assume that IHL should invariably function as the *lex specialis* whenever an armed conflict arises. Instead, the regime which governs a given right in a more detailed, comprehensive, and human dignity-centred manner ought to be accorded that character whenever fundamental rights are involved. An over-extension of IHL as an unconditional *lex specialis* risks distorting and oversimplifying the more complex, context-specific relationship between these two bodies of law.

Our position on *lex specialis* diverges from that taken by the International Court of Justice (hereinafter referred to as the ICJ) in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and therefore must be defended in greater detail. In that opinion, the ICJ held that "some rights may be exclusively matters of" IHRL or IHL, while others "may be matters of both these branches of international law", reaffirming that "the protection offered by human rights conventions does not cease in case of armed conflict".[32] Up to this point, our view accords with the Court's. However, the ICJ went on to state that, in the latter event, it is necessary to "take into consideration both" regimes, with IHL serving as the *lex specialis*.[33] The Court did not, however, provide a rationale for this assertion, and a critical examination of this position is necessary.

A charitable and possible interpretation is that the Court implicitly understood IHL to be the *lex specialis* for the specific purposes of the questions before it, but not necessarily in every situation where both regimes are concurrently applicable. In this regard, we contend that it is not appropriate to treat IHL as automatically or necessarily the *lex specialis* whenever both IHL and IHRL apply. Naturally, there must exist an armed conflict for the former to be applicable.[34] However, it is essential to determine which regime regulates the right(s) in question in greater detail and with more precision. As argued above, IHRL provides greater specificity concerning the scope and minimum, unconditional content of the rights to food, water, and essential nourishment. In any case, Zappalà has argued that:

> "IHRL could be of assistance in the interpretation of the provisions both of IHL, international criminal law (ICL) and general international law, particularly those concerning [...] humanitarian assistance and relief operations [...] and responsibilities any state has towards its civilian population".[35]

Certainly, where IHL and IHRL are at odds, the application of the former displaces that of the latter for the purposes of its own norms – yet IHRL continues to apply independently. If normative conciliation proves impossible, it may ultimately be the case that a State will incur responsibility under one regime due to the factual impossibility of honouring both.[36] In such situations, however, there is no legal reason to prefer the lower standard of protection protection offered by IHL – assuming it does in fact offer a lesser safeguard – over IHRL, given that both bodies of law remain binding on the State. As a result, extra-legal considerations inevitably come into play in the decisions made by State and other agents. Ethical, moral, and prudential reasons can – and should – tilt the balance in favour of choosing the more humane standards. This is not only because they better safeguard human dignity, but also because their disregard results in needless suffering and resentment.

More often, however, a joint reading of IHRL and IHL reveals yhat their respective aims are best fulfilled by affording greater protection to the right to food and correlated rights, through an IHRL-based lens. As Simone Hutter rightly noted, it is necessary to see "the right to food continu[ing] to protect the population during armed conflict".[37] Moreover, while IHRL continues to apply during armed conflicts, compliance with IHL alone does not ensure that all international legal obligations are satisfied. A State actor might fully observe IHL norms, yet nonetheless incur responsibility for breaching other obligations, such as those prohibiting genocide.[38]

It is also important to note that even when IHL informs the interpretation of IHRL and permits certain conduct, it does not thereby oblige agents to undertake it. Legally, IHL's permissibility merely authorises — it does not compel — specific actions under its framework. As such, a genuine choice remains. In making such decisions, it is essential to consider what other normative systems — morality, ethics, and prudence — indicate about the appropriateness of the conduct in question. If these systems offer compelling reasons against pursuing a course of action, it should, as a matter of principle, be refrained from.

Human beings are moral agents, and states and other collective entities act through them. Their other *responsibilities*[39] – including ethical ones – are therefore directly pertinent. It may well be the case that doing everything IHL permits is unreasonable in practice and counterproductive, such that it would be preferable to exercise greater restraint than what is legally allowed. Thirdly, in light of the principles of systemic integration

and the risks of legal fragmentation, it is possible that a choice in favour of IHL could engage the legal responsibility of those individuals and the organs through which they act, where such conduct breaches other branches of international law. This may arise where there is an inherent or unavoidable contradiction between the standards of the different regimes that claim to govern a given situation.[40]

Human dignity entails recognition of the inherent worth of every person and condemns their instrumentalisation.[41] Intentionally bringing about starvation, or depriving persons of essential supplies, is fundamentally contrary to this consideration. Such a contravention occurs whether starvation is a directly intended consequence or a foreseeable consequence of a course of action that is nonetheless deemed acceptable. Furthermore, the physical, mental, and emotional suffering that it causes, seriously undermines individual autonomy and entails a form of dehumanisation akin to other grave violations of human dignity and human rights law, such as torture.[42] This is not a mere technicality. Actions, interpretations, or legal constructions suggesting the permissibility of such conduct ought to be tregarded as highly suspect – borrowing from the doctrine of suspect classifications in non-discrimination law[43] – as they risk failing any admissibility test given their affront to fundamentally protected interests and elementary standards of decency. As will be discussed, even the Martens Clause and other foundational principles of IHL and international criminal law (hereinafter referred to as ICL) lend support to this view.

In light of these considerations, we now turn to the demands imposed by human rights law in the context of the prohibition of starvation. These demands can inform and influence standards under other legal regimes through interpretive exercises when those regimes address the same rights or foundational guarantees. This is relevant not only for a proper *lex lata* analysis but also for identifying possible *lex ferenda* reforms necessary to eliminate contradictions and normative gaps between applicable regimes. Furthermore, IHRL demands can shed valuable light on potential ways to interpret provisions of IHL and ICL that may not have been previously considered, but which remain legally admissible. IHRL considerations can help clarify the object and purpose of norms opposing starvation and bring the interpretation of standards in other regimes into alignment with contemporary human rights developments. As Article 31 of the Vienna Convention on the Law of Treaties stipulates, alongside a treaty's text, aims, and objectives, and the ordinary meaning to be given to its terms, interpreters must also consider "any relevant rules of international law applicable" when constructing treaty provisions.

2. THE INTENTIONAL CAUSATION AND THE LACK OF DILIGENCE TO PREVENT AND ADDRESS STARVATION AS CONTRARY TO HUMAN DIGNITY AND RIGHTS

The very denomination of IHL is paradoxical. It fails to capture the bittersweet feelings it can evoke after reading its provisions. This stems from the persistent tension it reflects between two pillars that are not always easy — or even possible — to reconcile: military necessity and the protection of human beings. As debates on proportionality reveal, IHL is sometimes interpreted as permitting the intentional or foreseeable infliction of significant harm on innocent persons in pursuit of military objectives.[44] In practice, this often places military values above human lives. Some interpretations even extend military objectives to extremes that, in our view, are impermissible even under IHL itself. Ultimately, such favouring of military considerations amounts to instrumentalising human lives.

While some might argue that this serves the broader purpose of protecting lives, this claim is often speculative, relying on unknowns and overlooking the very real harm caused to innocent people — frequently persons who, because they belong to 'other' groups, are not given equal weight in such calculations. No matter how much lip service is paid to the humanitarian ideal, the concept is too often invoked euphemistically or in ways that conceal the profound moral problems inherent in conduct that IHL permits.

As previously indicated, moral agents are not obliged to engage in conduct simply because a legal regime allows it. In this regard, it is important to recall that the law is an autonomous normative system – but one among others. Other normativities, such as prudential and moral considerations, retain the capacity to assess legal allowances from their own perspectives. If the law permits but does not require certain actions, these other frameworks may well provide compelling reasons to refrain.

Notwithstanding, a necessary caveat must be added: military advantage is *not* the sole or supreme principle of IHL, regardless of whether certain interpretations suggest otherwise. While the situation is often bleak enough, it is made far worse by expansive interpretations advanced by some legal operator – be they advisors, commentators, or academics – who, whether consciously or unwittingly, provide legal cover for the unrestrained conduct of armies to whom they are sympathetic. When it comes to issues related to food, it has even been acknowledged by Fakhri that IHL:

> "[D]oes not do enough to fully protect against hunger in armed conflict nor to shield food systems from further violence. This is because

> international humanitarian law ultimately organizes, but does not eliminate, violence in food systems".[45]

The edifice of IHRL, conversely, has been conceived and developed – both in theory and practice – around a single foundational idea: that every human being possesses an unconditional and inherent worth. This categorical worth, existing by virtue of being human, does not depend on the fickle capriciousness of a State or other authority recognising or granting rights on their behalf. Rather, individuals are understood as being entitled to demand respect for, and protection of, their fundamental autonomy[46] and of the rights and freedoms that safeguard the dimensions of life necessary for that worth to be respected and not trampled upon.

Both theoretical and practical developments have affirmed these foundations of human rights law,[47] which have profoundly transformed understandings of what international law can be about. This legal system is now seen as being not solely concerned with the well-being of individuals and peoples, ensuring their emancipation from subjugation and treating them as actual subjects – not mere objects – of legal protection.[48] So deeply embedded has this shift become that human rights law imposes substantive limits on what States may lawfully decide and do. It is well-established that countermeasures cannot be relied upon to justify the derogation from or denial of human rights obligations, as these are not predicated on any terms of reciprocity. This principle is expressly recalled in Art. 50.1.b of the Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission in 2001. A corresponding exclusion applies under IHL.[49]

Notwithstanding, as previously argued, IHL is not to be automatically regarded as the *lex specialis* where both it and IHRL are applicable. Why is this so?

The prohibition of starvation and the related duty to secure essential goods necessary for survival and well-being are underpinned by IHRL's detailed regulation of guarantees related to nourishment. This body of law provides a more specialised and comprehensive examination of the relevant entitlements and prohibitions. Owing to this greater normative richness and precision, IHRL is well-placed to inform the interpretation of other legal regimes whose provisions in this field may be broader or less exhaustive.

Moreover, the right to life – which, under IHRL, is qualified by the prohibition of 'arbitrary' deprivation of life and is typically interpreted in light of IHL-specific provisions during armed conflict[50] – there is no equivalent provision that modulates when acts against food supplies or access to nourishment might be regarded as legally permissible by reference to other regimes. The references to co-operation and resource considerations in instruments governing aspects of the right to food are predominantly concerned with strategies for progressively improving the enjoyment of the right and facilitating its wider satisfaction. They are not concerned with explaining how to understand the fundamentals and core content of the right.

Under IHRL, every human being enjoys a fundamental right to be protected from hunger,[51] as can be seen, among others, in Art. 11 of the International Covenant on Economic, Social and Cultural Rights.[52] It is necessary to note that starvation can also have an acute impact on other rights, such as the right to water,[53] the right to the enjoyment of an adequate standard of health – which protects access to goods that are necessary for attaining and maintaining it – and the right to personal integrity, which also protects from the fear of realistic threats entailing intense suffering and anguish.[54]

Accordingly, we disagree with claims such as those that, recognising how human rights law is applicable in or outside situations of armed conflict, hold that IHRL is underdeveloped when it comes to food (in)security, and that this is due to alleged shortcomings in aspects such as extraterritorial jurisdiction.[55] As we have argued elsewhere, the European Court of Human Rights' narrow approach to this issue is not prevalently so elsewhere,[56] and other systems, such as those of the Inter-American Court of Human Rights or even the Human Rights Committee, acknowledge an effects-based finding of such jurisdiction that can serve to identify venues of substantive and institutional protection and provide greater access to remedies.[57]

A useful starting point in this analysis is to recall how the United Nations Committee on Economic, Social and Cultural Rights clarified in its General Comment No. 12 that, while there is indeed an obligation to progressively seek the "full realization" of rights such as the right to food, states have nonetheless core or minimum obligations which they cannot evade by invoking resource issues or other considerations. This essential content, which is always protected under international law, related, in the Committee's own words, to an obligation incumbent upon states "to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger".[58]

As to the scope of the right's content, the Committee indicated that it is necessary to avoid narrow interpretations that only look at caloric, protein, and nutrient measurements.[59] Such an approach appropriately permits the analysis of situations in which, for example, populations are severely deprived of access to food but still manage to still have access to bare survival nourishment in terms of calories. The suffering that such conditions entail would see those responsible for their imposition as violating the right. Moreover, in the same document, the Committee also recalled that parties to the Covenant on Economic, Social and Cultural Rights

are subject to a threefold classification of obligations under the said treaty, namely those to respect, protect, and fulfil.[60]

The implications of rights belonging to IHRL are manifold, given their special nature.[61] They become even more pronounced when *jus cogens* and *erga omnes* considerations are taken into account. As is accepted, some human rights protections have a peremptory nature.[62] While we are conscious that ours may be a minority position, we contend that the right to food is no exception.[63] As has been argued by authors such as Gómez Robledo, Shelton and Ruiz Fabri, some elements can provide indicia of the peremptory character of certain human rights provisions. They include, among others, the fact that a right is framed as absolute and allows no exceptions whatsoever, such as their 'derogation' during states of emergency – which we would regard more properly as a suspension of the obligations to implement certain of their provisions – and the criminalisation of their violations.[64]

In this regard, the core or basic content of the right to food, which as a minimum standard to be invariably satisfied, can be deemed to be absolutely and unconditionally protected, can be seen as belonging to *jus cogens*. Ultimately, such a basic level of protection is unconditional, and could thus be seen as peremptory. In other words, it is possible for *part* of a normative content to be absolute to the extent that exclusions and exceptions are not permitted. This is the case even with a well-established peremptory norm, the prohibition of the use of force, insofar as it allows for its use in exceptional circumstances, such as self-defence or Security Council authorisation. Likewise, we argue that the core and basic components of the right to food can be interpreted as being absolute.

This content is therefore protected in a reinforced way, and the prohibition of starvation must be read in light of it. In other words, the basic content refers to those goods which must *always* be guaranteed and protected in terms of access, availability, and adequacy of standards – nutritional or otherwise — for the benefit of all human beings without discrimination, in all circumstances, including those of armed conflict.

Indeed, that protection neither discriminates between times of war and peace, nor between types or categories of individuals, for example, civilians or non-civilians alike. Dispositive IHL provisions that could be seen as permitting the circumvention of such basic protections would thus run counter to human dignity. Interpretations permitting such erosions ought to be excluded in light of the demand not to give effect to legal implications undermining the absolute supremacy of peremptory law.[65] Where reconciling interpretations that render the application of dispositive law consistent with peremptory norms can be identified, only these may properly be adopted, by virtue of the principle of conservation of norms.

Furthermore, from the preceding arguments it follows that, in our opinion, there is an important caveat in IHRL that does not exist in IHL: namely, the prohibition of intentionally starving enemy combatants. Both customary and treaty IHL expressly forbid instances of starving civilians.[66] But in addition to this, it is worth exploring the idea that the dignity of all human beings renders the severe suffering caused by starvation incompatible with that dignity, and thus makes it an inadmissible strategy. Starvation causes excessive and superfluous harm and is, moreover, frequently indiscriminate in nature, with a high likelihood of impacting civilians. In this regard, under IHL "it is absolutely prohibited to resort to starvation of enemy combatants (or fighters) in an indiscriminate manner".[67]

Thus, we posit that a rethinking of what is permissible during armed conflicts, in light of the non-derogable nature of human dignity and the prohibition against treating individuals predominantly as a means to an end, is in order. This should not be seen as a *lex ferenda* proposal. As stated above, innovative interpretations do not necessarily equate to developments in the content of the law. Rather, they may well entail a (re)discovery of what the law already demands or permits – particularly when interpreted in conjunction with other systemic components of the legal order that were previously overlooked or had not yet been developed at the time of earlier understandings.

We deem it important to draw attention to what Tom Dannenbaum has argued are the parallels between the intentional infliction of starvation and torture. Both practices subject victims to immense suffering, impeding their achievement of higher-order aims – whether those be basic survival, personal development, or the pursuit of social, political, or economic aspirations. In doing so, they not only disrupt the individual's immediate well-being but also undermine their long-term potential and dignity, exacerbating a sense of hopelessness and helplessness. Moreover, these acts of deprivation and torment fundamentally sever the harmonious bonds that connect individuals to their communities, families, and societies.[68] Victims are seriously dehumanised and objectified, and the way in which they are treated stands in stark contrast to the entitlements recognised on their behalf under international law on the basis of their inherent worth.

The effects of starvation and torture are not limited to the immediate victim; they ripple outward, eroding social trust, cohesion, and collective resilience. These acts create a pervasive atmosphere of fear, alienation, and despair, which can permeate the broader social fabric, leading to long-lasting trauma and division. In both cases, victims are objectified, reduced to mere instruments for the perpetrators to achieve their objectives — whether those are military, political, or ideological. This process of objectification is central to the mechanisms of torture

and starvation, as it strips the victims of agency, dignity, and autonomy.

The dehumanisation inherent in these practices inflicts not only physical and psychological harm but also undermines the fundamental principle of human equality that underpins IHRL. When individuals are treated as less than human, as tools to be exploited for some external end, their inherent worth is denied. This objectification reflects a dangerous erosion of moral and ethical boundaries, allowing perpetrators to justify actions that otherwise would be deemed unthinkable. Furthermore, the psychological consequences of both starvation and torture extend far beyond the immediate suffering of the victim. These practices are often deliberately designed to break the spirit and will of the individual, resulting in lasting psychological trauma. Survivors of torture and starvation may ensure profound and chronic mental health issues, including post-traumatic stress disorder (PTSD), anxiety, depression, and an abiding sense of betrayal. The social isolation that frequently follows such violations, particularly in environments where stigma attaches to victimhood, further complicates recovery, leaving individuals to grapple with their suffering in silence.

It is in this context that Dannenbaum's comparison between torture and starvation underscores the moral and legal urgency of addressing such violations. Both practices are not mere tools of warfare or political control; they constitute fundamental violations of the intrinsic dignity of the human person. International law, through instruments such as the Geneva Conventions and the Convention Against Torture,[69] recognises the absolute prohibition of both, reflecting the understanding that certain rights are so deeply rooted in human dignity that they cannot be compromised or violated under any circumstances. Thus, the parallels between starvation and torture are not solely a matter of shared suffering but also a reflection of the profound ethical and legal imperative to prevent, punish, and eradicate these practices. By focusing on the intersection between human rights, humanitarian law, and the enduring psychological impact of such violations, we obtain a more comprehensive appreciation of the far-reaching consequences of dehumanising practices. The challenge, then, lies not only in ensuring accountability for perpetrators but also in upholding a global normative framework that affirms inviolability of human dignity, ensuring that no person is ever reduced to a mere object for another's ends – whatever the circumstances.

The deliberate starvation of individuals fragrantly disregards human dignity in a manner fundamentally incompatible with the very foundations of human rights law, This teleological component of legal interpretation,[70] must. necessarily inform the interpretation and application of human rights norms. Starvation defies respect for the basic or core level of protection of the rights to food, water, and essential nourishment and access to goods that are necessary for survival – a protection that applies unconditionally and irrespective of the identity or status of the victim.

As to arguments suggesting that combatants may lawfully be killed in war, the response is twofold. First, not every method and means of warfare is permissible under IHL; in particular, those causing superfluous injury or unnecessary suffering are proscribed, as reaffirmed in Rule 70 of the ICRC's study on customary IHL.[71] Second, the Martens clause, found in the Preamble to the 1899 Hague Convention with Respect to the Laws and Customs of War on Land and its annex, deems that acts that public conscience and humanity considerations regard as immoral[72] are wrongful. We consider that intentional starving others is furthermore prohibited in accordance to those considerations. In any event, killing under IHRL is only permissible if it is not arbitrary. When armed conflicts are present, this entails that any operation with lethal consequences meets stringent conditions of necessity, distinction, proportionality, and prevention, among others. As argued above, a systemic and teleological interpretation of the relevant legal framework could sustain the position that death by starvation constitutes an arbitrary and therefore unlawful means of warfare, given the grave and deliberate denial of human dignity it entails. And even if this position is not universally accepted, then at the very least, one can see why starvation tactics that affect civilians, — whether intentionally or as "collateral" consequences — are intrinsically wrongful and illegal, as acts in breach of peremptory norms of international law.

It is true that the starvation of combatants as a method of warfare is not expressly prohibited in Article 54 of the Additional Protocol I. That provision does prohibit the use of starvation as a method of warfare against civilians by depriving them of essential food and medical supplies. Nonetheless, one can still examine whether IHRL demands remain applicable, unweakened by current IHL interpretations. Such demands must take into account other applicable norms of international law, provided such an interpretation is technically feasible. Moreover, even if it is believed that combatants could be legally targeted by such morally dubious tactics, those actions must nonetheless comply with the principle of distinction. They must therefore not be carried out in an indiscriminate manner liable to cause, or capable of causing, the starvation of civilians.[73]

Yet, even if one rejects the view that combatants are protected from starvation, a crucial practical question arises: is it truly feasible to prevent rebel combatants from obtaining food while obstructing the flow of vital supplies to a city housing populations of 200,000, 500,000, or even one million people? Such a task may well prove unachievable. In fact, imposing a blockade on essential goods in such situations could even have the

unintended consequence of aiding the insurgents by allowing them to generate revenue from illicit trade, or by alienating the suffering population, who may come to perceive those resorting to starvation tactics as callous to their humanity and be driven to assist those fighting them.

The human rights implications underlying the prohibition of starvation are manifold, and by no means limited to the consequences of the peremptory core protected, in our view, under this legal regime. Altogether, the rights to food, water, essential goods for survival, and an adequate level of physical and mental health[74] safeguard the opportunity for individuals not only to survive but also to maintain, in a sustainable manner, *adequate* nutrition and access to goods necessary for their well-being and dignified existence.[75] They are protected under IHRL, as was noted by the Inter-American Court of Human Rights in the *Street Children* and *Oroya* cases, and by the European Court of Human Rights in its landmark decision in *Z and Others* v. *United Kingdom*[76] and more recently in *Verein Klimaseniorinnen Schweiz and others*.[77]

Human well-being and the protection of dignified conditions of life, as the rights to life, personal integrity, food, water, and health indicate, encompass and protect both physical and mental dimensions. In a recent and groundbreaking judgment, in the *Case of La Oroya Population v. Peru*, the Inter-American Court of Human Rights referred to these aspects by holding that the right to health refers to a complete physical, mental, and social well-being – not merely the absence of ailments – and includes environmental considerations. It also held that the right to life encompasses protection of access to conditions necessary for a dignified existence. In connection with our current study, it is particularly noteworthy that the Court expressly stated that, among the necessary conditions to ensure a dignified life, the following components must be present: access to and quality of water, nourishment, and health.[78]

In light of this, it may be said that a human rights violation arises not only when a person dies of inanition but also when they are seriously deprived of essential elements for survival or for sustaining acceptable wellbeing standards. Accordingly, one can consider that to be a violation of the obligation to respect where an act directly impairs the enjoyment of those rights. This can occur, for example, by depriving or impeding access to medicine essential for maintaining good mental and physical health, or by allowing only minimal levels of food and drinkable liquids to be made availably, thereby forcing victims to survive at a bare subsistence level while suffering grave physical and mental hardship. As to breaches of the duty to protect, one can identify situations where an actor with a guarantor position — such as a jurisdictional state or occupying power — fails to exercise due diligence to secure the satisfaction of human rights within the limits of available resources. Furthermore, one must consider the interdependence between rights and legal domains. For example, environmental harm can precipitate food insecurity, thereby impairing the full enjoyment of the rights under examination. Such harm can result either within or outside armed conflicts. A United Nations Special Rapporteur, for instance, has referred to the "transboundary impact of conflict-induced environmental damage leading to food insecurity".[79]

Additionally, it is important to stress that, as it is said in the Oroya case and elsewhere, the protected content of those rights refers not only to accessibility – including affordability and structural or systemic conditions–[80] and availability, but also to adequacy and quality. This requires that substances and goods be of sound quality and not harmful.[81] For example, the poisoning of food or its prolonged confiscation leading to spoilage would constitute a breach to human rights. Vulnerable individuals and groups are entitled to special measures of protection, including affirmative action, consistent with the principle of equality and non-discrimination, as case law has affirmed.[82] Thus, populations at risk of acute starvation or threatened by it must receive special and urgent protection and humanitarian relief. To obstruct such relief would contravene both these principles and peremptory norms, in light of the unconditionally protected core rights at stake.

Accordingly, even *in abstracto* institutionally permitted acts, such as the use of the veto powers of the Permanent Members of the UN Security Council,may constitute a jus cogens violation and an abuse of right when used to bar access to humanitarian aid in situations of urgent and dire need,[83] in our opinion. It must be stressed that vetoes are not above the law but are themselves governed by law.[84] They belong to a system that has at its apex the public order components of *jus cogens* norms and the *erga omnes* obligations they generate, which require all parties to seek to bring to an end their violations, to not assist such violations, and to peacefully work towards the cessation of said violations, as the International Law Commission's articles on Responsibility of States for Internationally Wrongful Acts indicate in Art. 41.

Impeding access to humanitarian assistance in armed conflicts and other emergency situations can thus engage the responsibility of the parties blocking it, whether States or non-state actors.[85] Their responsibility can also be engaged if they actively attempt to destroy humanitarian goods, impede their access and availability, or negatively affect their adequacy otherwise. In such cases, they would be violating or abusing the rights in question. Non-state actors may well be subject to obligations to respect, requiring them to refrain from engaging in such conduct under IHRL, as various developments indicate.[86] After all, these actors prossess the factual capacity[87] to prevent the full enjoyment of rights, including the rights to food, water, and/or health; and States have duties to

protect their populations, or those who depend upon them, from abuses or violations committed by non-state actors[88] when those States occupy a guarantor position, such as in cases of occupation, we argue.

Furthermore, in the case of States or actors with a guarantor position,[89] including that of occupying powers towards populations different from their own,[90] a duty exists to actively provide (fulfil) the required goods or ensure their provision, meeting all the adequacy, accessibility, and availability conditions. This has been confirmed by the United Nations High Commissioner for Human Rights, Volker Türk, in a comment "on the risk of famine in Gaza". He reminded Israel

> "[A]s the occupying power" that it "has the *obligation to ensure* the provision of food and medical care to the population *commensurate with their needs* and to *facilitate* the work of humanitarian organizations *to deliver* that assistance. Israel must ensure that the population *can access* this aid in a safe and *dignified manner*", in light of both ICL and IHRL[91] (emphases added).

This opinion supports various assertions advanced in this paper, including the proposition that safe and dignified conditions of life must be upheld and taken into account when considering whether the rights that entitle human beings to be free from starvation are being respected; that obligations can require the direct provision of essential supplies in the case of states occupying a guarantor position, and that there exists a duty of all actors who could become a threat to their accessibility not to hinder assistance essential for the satisfaction of human needs, including nutritional intake requirements, in ways that permit individuals to live adequately. Thus, while acute famine and death by inanition are extreme events demonstrating the violation of those rights, there exists a whole spectrum of violations that, without reaching such a point, nevertheless run contrary to human rights demands, we posit.

Additionally, all actors, including corporate entities, must conduct themselves with due diligence to avoid contributing to negative human rights impacts,[92] ensuring that they are not complicit in violations related to starvation and do not assist parties perpetrating such violations in any manner whatsoever.[93] In the case of individuals, their potential domestic or international criminal responsibility may also be engaged.[94]

Moreover, apart from the duty not to contribute to acts seriously contrary to the rights to food, water, and other essential supplies, States have an obligation to cooperate to bring an end to violations of economic, social, and cultural rights even when non-peremptory standards and dimensions are implicated. This, coupled with the prohibition of regressivity,[95] underscores that States can be held responsible for contributing to acts that impede the satisfaction of minimum levels of nourishment and access to essential goods necessary for survival and basic well-being. That minimum level of protection is always unconditionally required of all States, with many of them bearing obligations that require the satisfaction and guarantee of standards exceeding such a basic core.

Furthermore, there is an obligation on states to ensure that, if and when they impose countermeasures and so-called sanctions, their implementation does not give rise famine a failure to secure the levels of nourishment identified herein, lest their international responsibility is also engaged. This follows from General Comment No. 8 of the Committee on Economic, Social and Cultural Rights[96] on the "relationship between economic sanctions and respect for economic, social and cultural rights", read in conjunction with the considerations outlined in this section. Responsibilities of the sort described in this paragraph can be shared by different actors, who are obliged to cooperate in the provision of humanitarian assistance.[97]

Finally, it may be added that, in terms of inter-state and international relations aspects governed or impacted by the prohibition of starvation, the *erga omnes* character of the pertinent obligations entitles other members of the international society to denounce such breaches and demand their cessation. This can contribute to the respect for, and protection of, actual and potential victims. Furthermore, third parties invoking *erga omnes* obligation may also be entitled to institute proceedings before competent bodies with jurisdiction, given the procedural standing such members possess.

In this section, we have referred to certain ICL and IHL considerations. This is inevitable, given the simultaneous application of these frameworks alongside IHRL under particular circumstances. International law is, after all, a legal system. Considering the specific regulation that human rights law offers in greater detail in some respects, and the manner in which it better addresses a common foundation centred on the protection of human dignity — a foundation shared across the various branches of international law — it can be inferred that its content indeed permeates the substance of these and other regimes, such as refugee law, among others. We will now turn to the examination of some of the standards that these other branches of international law, concerning the prohibition of, and protection from, starvation, reading them in light of human dignity considerations.

3. ON HUMAN CLERICAL ERRORS AND HUMAN EVIL: STARVATION UNDER INTERNATIONAL CRIMINAL LAW

ICL prohibits and punishes the causation of starvation of civilians during armed conflicts, whether of an international or non-international character. Such

conduct constitutes a war crime in either case.[98] Due to what has been described as a clerical or administrative mistake or oversight, the Rome Statute of the International Criminal Court originally failed to label the intentional infliction of starvation of civilians during non-international armed conflicts as a war crime under Article 8 of the Rome Statute. While some commentators attribute this omission to oversight, others suggest it may have been deliberate.[99]

Specifically,[100] while Article 8(2)(b)(xxv) of that treaty states that "intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies" constitutes a serious violation of "the laws and customs *applicable in international armed conflict*" and hence a war crime (emphasis added). However, a similar provision was initially absent from the rules governing non-international armed conflicts under Article 8(2)(e).[101]

It was not until 6 December 2019 that this gap was formally addressed. An amendment to the Rome Statute inserted Article 8(2)(e)(xix), criminalising: "*Intentionally* using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies" (emphasis added).[102]

The prohibitions in question are not subject to reciprocity conditions, and thus it is not possible to ignore or suspend them as a response to abuses perpetrated by other parties, as explained at the beginning of section 1. As the stressed word in the cited provision indicates, it is also important for us to refer to the *mens rea* – in this case, intentionality. In this respect, it is not indispensable for the result of starvation to have been the desired outcome as a precondition for criminal responsibility to be engaged. The mere fact that one's actions will probably generate such an outcome, with awareness of the likelihood of causing such a consequence, suffices.[103] This is so even if only a few are affected, and even if the pertinent effects are not desired as such in terms of goals, insofar as there is a "practical certainty" that the consequence will follow one's actions "barring an unforeseen or unexpected intervention".[104] In other words, "the 'intention to starve' element of the crime might be satisfied by either direct or oblique intent".[105] In addition to this, it is not required for starvation to be the only desired objective or result of an agent for them to have international criminal responsibility: the lack of an exclusive intent in this regard permits criminal responsibility to emerge when it is one among different intended outcomes, as Manuel J. Ventura has observed.[106]

The problem with the amendment is that it will only be operational in respect of those ICC States parties that consent to its application to them and to their potential situations or to their nationals.[107] Two further things should be noted. Firstly, the amendment confirms that it is not only concerned with the intentional deprivation or impeding of access to *food stricto sensu*, but of all objects that are necessary for survival. These may include medicines, water (e.g., making water undrinkable or unavailable), and other goods that are essential for survival. This aligns with what has been argued in the preceding sections. While this means that certain violations of IHRL are not criminalised under the Rome Statute, this should not be read as casting doubt on the scope of human rights protection, as discussed above. Ultimately, criminal law is an *ultima ratio* that does not deal with *all* possible human rights violations, but only with serious ones.[108] Non-criminalised human rights abuses nonetheless persist as violations of law.[109]

Secondly, the prohibition of starvation in the Rome Statute is only punished when carried out against civilians. One might wonder whether this refutes one of the arguments presented in this paper, specifically, that starving combatants is also forbidden. To our mind, this is not so under IHRL, and it was within that context that the proposed interpretation covering combatants was advanced.

While it is certainly true that an expansive interpretation would be at odds with the principle of legality, which requires the prohibited conduct to be clearly foreseeable both under ICL[110] and IHRL,[111] and which also prohibits expanding the scope of the precise criminal provisions, the same does not apply in relation to the operation of human rights law. Here, the logic and rationale of both branches differ, notwithstanding that both attempt to protect human dignity in different ways, especially when crimes against it are enshrined. Human rights law is particularly receptive to evolutive interpretations and to the adoption of those (technically possible) interpretations that are most conducive to the protection of the liberty, autonomy, and dignity of human beings, as the *pro personae* principle suggests.

On the other hand, when it comes to ICL, the following can be said. While certainly the act of starving combatants cannot be punished under the Rome Statute as it stands today, one cannot rule out that future developments in treaty or customary criminal law could take place, however unlikely. This unlikelihood, in turn, is telling of how State negotiators and agents may in some cases cling to tactics or adopt perspectives that would quite possibly be condemned if carried out by others against them. Yet, in practice, they have shown a readiness to refuse to treat them as illegal if their own states or allies desire to resort to them. Regrettably, the policy motivations of states may be lacking in this respect, leading to a dearth of general and uniform practice and *opinio juris* in this regard. As is often the case, failures to make the law more adequate in ways that give greater leeway to states involved in questionable conduct, or their allies, or that retain "freedom" to engage in certain conduct, reflect the immorality of politics and state

practice. New instances of such realities can be added to the long record of double standards and misguided pragmatism.

As to the remote possibility of customary international law enshrining additional criminal prohibitions in the future, it must be recalled that the *nulla poena sine lege* principle is not the only one that exists in ICL. A *nulla poena sine jus* criterion also exists, which allows international criminal responsibility to be engaged when individuals are foreseeably and accessibly aware that their conduct was contrary to customary legal prohibitions, and not only those found in treaty provisions.[112]

Needless to say, the criminal prohibition of starving *civilians* also clearly exists under customary ICL and is pertinent in a variety of instances, including that relating to the prohibition of following illegal orders and commands.[113] This is why individuals who are neither nationals of ICC State Parties nor perpetrate crimes in situations before the ICC must also consider extraterritorial and transboundary criminal law risks. This can be seen with respect to crimes against the Rohingya people.[114] Indeed, in such cases, criminal responsibility can arise for participating as perpetrators, accomplices, or otherwise.

Confirmation of this can be found in the 20 May 2024 statement by ICC Prosecutor Karim Khan concerning his office's applications for arrest warrants in the situation in the State of Palestine. Here, he stated that there are "reasonable grounds to believe that [...] the Prime Minister of Israel, and [...] the Minister of Defence of Israel, bear criminal responsibility" for the crime of starvation of civilians as a method of warfare,[115] under Article 8(2)(b)(xxv) of the Rome Statute (which, as aforementioned, only applies in international armed conflicts). The statement further added that it is considered that there has been "a common plan to use starvation [...] against the Gazan civilian population as a means to" destroy Hamas, exert pressure to bring about the release of hostages, and "collectively punish" that population.[116] This wording confirms that the current crime of starvation[117] under the Rome Statute only applies when it is used against civilians, and that intentionally starving them is a means of using them as a tool to achieve objectives – which, as we have been arguing here, entails the instrumentalisation of human beings in ways that disregard their dignity and human rights.[118] This observation aligns with the core argument advanced in this paper.

Furthermore, the Panel of Experts in International Law convened by Prosecutor Khan issued a report in support of the applications for arrest warrants, in which they indicated that the crime has allegedly taken place, among other ways, by virtue of "attacks on civilians gathering to obtain food and on humanitarian workers". The experts considered that there was a plan to intentionally bring about starvation, which has caused many deaths, intense suffering, and severe deprivations with regard to the enjoyment of fundamental rights.[119]

In light of these findings, it is worth pointing out that Security Council Resolution 2417 (2018) also addresses the issue of starvation in armed conflict and has been regarded as a landmark, despite some shortcomings, for "placing the issue of starvation on the agenda of the Security Council".[120] The Resolution's preamble refers to the concept of "food security," emphasising its relevance to human rights and how armed conflicts exacerbate food insecurity. Furthermore, the Resolution stresses the importance of prosecuting international crimes in both national and international criminal justice systems, explicitly urging States, in paragraph 10, to investigate and take action against those responsible for "violations of international humanitarian law related to the use of starvation of civilians [...] including the unlawful denial of humanitarian assistance to the civilian population in armed conflict" (emphasis added). This aligns with the findings of the Panel of Experts, serving as a strong reminder of the criminal nature of "the use of starvation of civilians as a method of warfare," which is strongly condemned in paragraph 5 of the Resolution. The Resolution also acknowledges that such practices have occurred in "a number of conflict situations" and are "prohibited by international humanitarian law," the study of which we now turn to.

Before doing so, however, it is important to note two things: first, the resolution reminds that responsibility for starvation can be engaged as a result of different acts and omissions. This includes not only destroying food and other supplies and goods that are essential for survival and basic nourishment but also other conduct impeding or refusing access to such resources.

Secondly, ICL also punishes acts that resort to starving individuals *outside* the context of armed conflicts, just as IHRL does. In this regard, as a token, one can consider how Article 7(1) indicates that, as long as they form part of "widespread or systematic attack[s] directed against any civilian population", the following acts, among others, are deemed as crimes against humanity: murder (which could be carried out by means of "withholding food or medicine from populations under [...] control");[121] extermination (which can be brought about by intentionally caused inanition and blocking access to medications or other essential supplies for survival); forcible transfers of populations engineered by the manipulation of their hunger;[122] persecution using starvation as a means, or "[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury *to body or to mental or physical health*" (emphasis added), which potentially encompasses starvation, given that it undoubtedly causes such suffering and injury. The next section will look at the dichotomy between conflict and non-conflict scenarios. Outside of armed conflicts, the Rome Statute can also

be considered to treat starvation acts as amounting to these specific crimes when they are directed against civilians, as follows from this paragraph. But beyond current prohibitions, customary and treaty law could evolve and develop to encompass a broader definition of criminally prohibited conduct related to the deprivation of adequate goods that are essential for survival.

4. A CONTEXTUALISED AND TELEOLOGICAL READING OF IHL DOES NOT ONLY FORBID INTENTIONALLY CAUSED STARVATION

It might seem odd at first glance that we have left the examination of international humanitarian law's regulations of starvation for the final section of this paper. One might wonder whether it would not have been more intuitive or adequate to start with its analysis at the outset, insofar as it determines what can be done during armed conflicts. The answer, however, is in the negative. While regretfully starvation is still used in armed conflicts around the world, its use is prohibited by international law even when it is carried out outside the context of such confrontations. Moreover, the rationale and logic of the prohibition of starvation is better understood when seen in light of human dignity, which explains why it is deemed wrong and contrary to human rights. IHL also considers military necessity, as pointed out above, and so its study alone fails to fully grasp the underlying elements of the prohibition. Furthermore, IHL should not be seen as the appropriate *lex specialis* of the international legal stance towards intentionally or foreseeably human-caused starvation, as argued above.[123]

That said, there are some IHL provisions that could seem to suggest that belligerent parties have some leeway to cause or knowingly permit the continuation of starvation e.g., by denying or obstructing access to essential supplies. In our opinion, rather than only being a failure to ensure the pertinent rights, this also amounts to an act of knowingly causing their non-enjoyment, and thus to a breach of the duty to *respect* human rights i.e., to refrain from violating them.[124] As studies on the fragmentation of international law well remind us, such standards are not found in isolation but are part of a legal system, as both the International Law Commission and the Vienna Conventions on the Law of Treaties, in addition to numerous internationalists, have indicated.[125]

It is inconsistent to assert that states and also non-state actors – which, as we and others have argued, can have human rights duties of their own[126] – must regard IHL as a relevant framework for interpreting human rights law during armed conflict, but that human rights law should not be similarly considered in the interpretation of IHL. If they are interrelated regimes, they would have relationships that transcend a simple unilateral influence. Furthermore, saying that only IHL shapes IHRL considerations but not the other way around would amount to saying that destructive military operations are more important than human rights considerations, and that such operations should not be interpreted at all in light of the latter. The opposite is true. Not only there are limits to the conduction of hostilities, but also human rights have influence across different areas of international law and contribute to its development. While this legal system has regulated armed conflicts for a long time, it is only somewhat recently that it has expressly begun to protect human rights. Pretending that things would still be as they were before this would amount to denying important normative developments in *lex lata*, and bowing to militaristic expectations – minimizing legal and ethical restrictions on excesses and problematic interpretations within its field.

If the different regimes of international law are interrelated and at least partly share the same foundations, both – and not only one of them – ought to be seen as pertinent in the analysis of particular conduct. The opposite would reveal double standards attaching greater importance to bellicose policy considerations rather than ensuring that legal criteria remain consistent, as if military necessity were the only paramount consideration of IHL, which, thankfully, is not the case, for all the shortcomings of that body of law. Arguments in favour of such positions end up favouring militarist perspectives, even if unintentionally. Moreover, in our opinion, human rights norms and other standards that have been adopted after certain IHL rules were already in place; the object and purpose of IHL standards; and principles found in rules such as the prohibition of superfluous harm[127] and the Martens clause, must be considered to interpret IHL rulings in an updated – i.e., evolutionary – manner that would seem to strongly forbid the infliction of starvation during armed conflicts.

When it comes to IHL, it is possible to distinguish between negative obligations – to refrain from affecting essential supplies or goods that are necessary for the survival of civilian populations in ways that destroy, damage, or render them useless – and positive duties. Pertinent provisions include Articles 54 of Protocol I and 14 of Protocol II to the 1949 Geneva Conventions, as well as Rule 54 of the ICRC's Customary International Humanitarian Law Database. It is also necessary to consider duties to supply such goods to populations in occupied territories, and to permit humanitarian operations providing them when civilian populations are in the territories under the control of a belligerent party and do not sufficiently have them, even if no occupation is taking place. This follows from Article 70 of Protocol I to the 1949 Geneva Conventions. These sets of obligations are both relevant and complementary.

The prohibition of actions that attack or negatively affect essential goods, services, or facilities for the

survival and dignified wellbeing of civilians – such as food, hospitals, and other indispensable objects[128] – demands abstention from actions inimical to them, given how this would impede the full enjoyment of fundamental human rights, as explored in the preceding sections. Thus, reference to satisfactory nutritional value, (considering cultural and other factors), accessibility and availability, and other aspects of the rights to food, water, and health, must be taken into account,[129] insofar as actions attacking or harming them might constitute a wrongful act under IHL, and not exclusively under IHRL.

In turn, the regulation of duties to either supply or permit the provision of essential goods comes with certain caveats. Occupying powers are under an obligation to directly ensure the satisfaction of the pertinent rights in the territories they control, while the obligation to allow provisions outside of occupation refers to the duty to facilitate and permit relief actions taking place. In the latter case, it is true that such operations should be conducted in accordance with agreements between the interested parties. But in our view, such a reference ought not to suggest that it is entirely optional, or subject to the discretion of a given party to a conflict, whether assistance is "permitted" to take place. Instead, there is an obligation to enter into such an agreement, which must *reasonably* govern how relief operations will be carried out. A citation of the provision, namely Article 70 of Protocol I to the 1949 Geneva Conventions, is called for. It reads:

> "If the civilian population of any territory under the control of a Party to the conflict, *other than occupied territory*, is *not adequately provided with* the supplies mentioned in Article 69, relief actions which 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 relief actions. Offers of such relief *shall not be regarded as interference* in the armed conflict or as unfriendly acts [...] 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 such assistance is destined for the civilian population of the adverse* Party [...] The Parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel [...] (a) shall have the right to prescribe the *technical arrangements*, including search, under which such passage is permitted; (b) may make such permission *conditional on the distribution of this assistance being made under the local supervision* of a Protecting Power [...] The Parties to the conflict and each High Contracting Party concerned *shall encourage and facilitate effective international co-ordination* of the relief actions referred to in paragraph 1" (emphases added).

An interpretation of Article 70 which understands that a party may not *arbitrarily* refrain from earnestly and in good faith *striving* to enter into the necessary agreements can be informed by the following considerations: acknowledging that IHL is *part* of the system of international law, and not the only body of law governing aspects of nourishment and goods that are essential for survival; as well as the consideration of the object and purpose of the applicable standards for the sake of interpreting them. As has been written by Akande and Gillard:

> "Withholding of consent to offers to conduct humanitarian relief operations would violate international law in two situations. The first arises when belligerents are *obliged* to consent to offers to conduct humanitarian relief operations, but fail to do so [...] an obligation to consent can arise in situations of occupation, or when the Security Council has either adopted binding measures requiring parties to consent to humanitarian relief operations or has imposed such operations. The second situation in which consent is withheld unlawfully is when those whose consent is required withhold it arbitrarily"[130] (emphasis added).

Thus, rather than being *conditions* that are understood in absolute terms as potential vetoes if the will of a party is missing, the reference to agreements must be understood as *mechanism* which parties to a given armed conflict are *genuinely* obliged to seek in good faith, to ensure that civilian populations have access to food. Construed in this way, one might read technical criteria invoked by a given party as conditions only appropriate insofar as they are actually intended to ensure that people are given access to essential goods for their nourishment and survival, among others. That is to say, they are to be used and designed to ensure relief, rather than as obstacles to it through bad faith or negligence. Relying on a restrictive reading of the provision could simply end up supporting those who have no real will to permit or bring about relief, preferring to advance their agendas in inhumane ways. Bringing about the relief operations is to be seen as a duty and burden of the parties, with the respective rights to be guaranteed and respected, mirroring the manner in which certain human rights provisions have been construed.[131] Therefore, the conduct of any party to the conflict in ways that end up delaying urgently needed supplies or effectively ensuring their scarcity or absence for a given population is thus to be read as an abuse of right[132] and a breach of the duties to respect.

Additionally, when a State is in a guarantor position, its failure must equally be regarded as a violation of its obligation to ensure the enjoyment of rights to food, water, health, and other essentials.

Now, to determine when relief action is required and thus initiatives to ensure that it is conducted are set in motion, one ought to look at human needs. This is reflected in the the ICRC's 1987 Commentary on Article 70 which indicates that:

> "The need for a relief action and the extent of its urgency must be assessed in every case individually, depending on the real requirements. It is the 'essential' character of such requirements that must be the determining factor. This is a matter of common sense which cannot be formulated in precise terms".[133]

The ICRC added that the beneficiaries of the standard are "the persons who are suffering."[134]

Finally, the same commentary can be seen to support our assertions about the duty to diligently try to enter into an agreement, when it says that one such agreement, when "necessary [...] should not be withheld". Such an agreement cannot be refused "for arbitrary or capricious" reasons.[135] When extreme human suffering and survival are at stake, a State that merely insists on defeating its adversary while refusing to respect the essential needs of populations ultimately treats their members as mere objects, disregarding their inherent worth and dignity – a stance which ought to be construed and regarded as arbitrary from both a systemic and teleological perspectives. In this case, to understand what would amount to an arbitrary refusal, we consider that IHRL is the *lex specialis* that gives content to the term. Cross-fertilisation and multi-directional influences exist between those regimes, rather than a one-way relationship. Therefore, this is the yardstick that we think ought to be considered, especially given how some have argued that the exceptions to free passage of consignments under Art. 23.2 Fourth Geneva Convention have been superseded by Additional Protocol I.[136]

In addition to Article 70 of Additional Protocol I, Article 69 sets forth that in situations of occupation, the occupying power must:

> "[T]o the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship".

This confirms and is based on the guarantor position that such powers have. Here, it is important to bear in mind the debates in the discipline concerning what qualifies as an occupation, which include functional models.

Even if those were not accepted, other provisions, including Article 69 of Additional Protocol I, IHRL standards, and others, are in any case applicable without a doubt. These include Rule 55 of the ICRC's customary IHL study, which indicates that "[t]he parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control". The content of this Rule coincides with what we have been explaining in this section pertaining to other (treaty) provisions, especially in light of the fact that starvation as a method of war is prohibited during both international and non-international armed conflicts (Customary Rule 53), as are attacks or actions against "objects indispensable to the survival of the civilian population" (Rule 54), obstructions of passage of adequate humanitarian relief (Rule 55), and attacks or actions against medical personnel and others whose services are essential for the survival of a population.[137] Thus, impeding the actions of those able to manufacture or provide essential goods, or destroying or attacking the facilities or objects through which they are provided, is equally to be regarded as contrary to the obligations of parties to armed conflicts. Hence, a human dignity and human rights understanding would better capture what the conditions for allowing relief operations are in the current social and normative context, instead of relying primarily on considerations of on military advantage.

Finally, it is important to add that the "obligation to allow the passage of humanitarian aid" binds not only States but also non-state armed groups in non-international armed conflicts.[138]

CONCLUSIONS

In conclusion, the analysis of legal texts should not be treated as mere abstractions focused solely on theoretical details. Law is an applied discipline, and its impact on human lives can be profound. As Tolstoy illustrated,[139] the implementation of legal standards — whether technically correct or flawed — and the interpretations on which they rely can profoundly –even dramatically— affect human beings. We must consider the individuals who endure the anguish and suffering of not knowing if they will have access to food, water, or medical care, or worse still, those who live with the certainty that such necessities will not be available. These are fundamental resources that sustain human life in dignified conditions. It is imperative to see those individuals as human beings deserving of protection and respect, with lives, relationships, histories, and complexities similar to our own. To acknowledge their worth, their suffering, their humanity.

It is also of the utmost importance that we keep an eye on their fundamental rights, including "[b]eing free

from hunger and maintaining access to food", which as Lander and Richards indicated are:

> "[F]undamental precepts underpinning modern human society. The right to food is considered as one of the most important human rights, with some scholars stating that 'the right to food has been endorsed more often and with greater unanimity and urgency than most other human rights'".[140]

Against this backdrop, the law on starvation must be critically examined. International law sets boundaries on what domestic systems and authorities can decide, delineating what is beyond the sovereign scope of freely made decisions by virtue of the inherent wrongfulness of certain choices and actions. Self-determination and sovereignty grant freedoms but within the limits of international legality.[141] This body of law constitutes not a collection of isolated precepts, but an evolving system. Human rights law, in particular, imposes limits on state and non-state actors and forms a crucial part of the normative framework for interpreting legal provisions. Specifically, IHL has influenced ICL,[142] framing the prohibition of starvation as a corollary to the rule of civilian immunity in armed conflicts. This rule has evolved to include multiple standards aimed at ensuring the rights to food, water, and health, incorporating the notion of food security in armed conflicts.

The Security Council, in its 2022 Presidential Statement on Conflict-Induced Food Insecurity, emphasised the need to break the cycle between armed conflict and food insecurity, noting that armed conflict is a significant driver of acute food insecurity for 117 million people in 19 countries and territories. This ongoing crisis is a scandal and a stain on our human conscience. The persistence of such suffering, enabled by certain legal interpretations, is unacceptable. We must challenge these interpretations by integrating the comprehensive perspectives of international law, always mindful of our shared humanity.

While the prohibition of starvation is essential for disrupting the link between warfare and food insecurity, its application extends beyond armed conflicts. Law is not the only tool for combating starvation, but it can help internalise important perceptions relevant to other social dynamics. The prohibition should not be narrowly construed in a manner that undermines its implications, which concern the basic well-being of human beings in various scenarios, including those where criminal groups or corporations threaten adequate nourishment. International law forbids not only actions that obstruct access to food but also those that impede access to liquids, medicine, and essential services necessary for survival and well-being – both within and beyond armed conflicts.

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COMPETING INTERESTS

The authors have no competing interests to declare.

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