

International Law on Armed Conflict and Sustainable Food Security

Antonio Coco

A. Hunger Fuelling Conflict, Conflict Fuelling Hunger

Of the 193 million people suffering from acute food insecurity around the world, according to the 2022 Global Report on Food Crises, more than 139 million live in countries plagued by an armed conflict—making this by far the ‘primary driver’ of hunger around the world.¹ The intrinsic connection between conflict and food insecurity is often taken as a given, and with good reason. In fact, it can be affirmed that hunger and conflict feed on each other, with one fuelling the other in a vicious cycle. On one side, food crises and—more generally—food insecurity strain societal relationships, creating opportunities and pretexts for resort to armed violence.² In fact, states have started using the expression ‘food security’ to highlight the connection between food and peace at the highest political level.³ On the other side, armed conflict often results in the destruction of food crops and jeopardizes or disrupts processes critical to grow, store, and distribute food, including by breaking supply chains or rendering agricultural land unusable. Protracted conflict threatens or negatively impacts the four pillars of food security:⁴ (i) the *availability* of a sufficient quantity of food of appropriate quality; (ii) people’s *access* to resources adequate to acquire sufficient food; (iii) proper *utilization* of the available food resources to achieve a state of nutritional wellbeing; (iv) *stability* of the availability of and access to sufficient food of appropriate quality.⁵ This is due to damage inflicted not just directly by military attacks but also indirectly by displacement of people onto areas which would otherwise be

¹ Global Action Network against Food Crises and Food Security Information Network, ‘2022 Global Report on Food Crises’ (World Food Programme 2022) 6–7; Food and Agriculture Organization of the United Nations (FAO) and World Food Programme (WFP), ‘Hunger Hotspots: FAO-WFP early warnings on acute food insecurity—October 2022 to January 2023 Outlook’ (FAO and WFP 2022) viii and 1.

² Brian Lander and Rebecca Vetharianam Richards, ‘Addressing Hunger and Starvation in Situations of Armed Conflict—Laying the Foundations for Peace’ (2019) 17 *Journal of International Criminal Justice* 675, 691.

³ Michael Fakhri, ‘Framing the Problem of Hunger and Conflict at the UN Security Council’ (*Just Security*, 22 September 2022) <<https://www.justsecurity.org/83173/framing-the-problem-of-hunger-and-conflict-at-the-un-security-council/>> accessed 26 April 2023.

⁴ Committee on World Food Security, ‘Framework for Action for Food Security and Nutrition in Protracted Crises’ (WFP, International Fund for Agricultural Development (IFAD) and FAO 2015) 2, para 4.

⁵ FAO, ‘Food Security’ (Policy Brief, issue no 2, 2006) <https://www.fao.org/fileadmin/templates/foaitaly/documents/pdf/pdf_Food_Security_Cocept_Note.pdf> accessed 25 April 2023.

used for food production.⁶ As a matter of fact, food security considerations related to armed conflicts concern not only people living in areas of active hostilities but also those who are forced to relocate and those living in areas hosting internally displaced persons, asylum seekers, and refugees.⁷ At times, conflict is tied with food crises so severe that they lead to starvation, that is, suffering or death caused by lack of food or other objects indispensable for human survival.⁸ The recent conflict in Yemen constitutes but one example of such deathly escalation.⁹

The war in Ukraine, ongoing at the time of writing, shows also how armed conflict could threaten to escalate to a global food crisis when the countries involved in the hostilities (in this case Russia and Ukraine) are major food producers on whose exports other countries rely.¹⁰ Food shortages may be caused not only directly, by stopping or reducing food exports (as in the case of grains produced in Russia and Ukraine), but also indirectly, by withholding exports on goods necessary to grow food crops, such as fertilizers.¹¹ The food shortages caused by the Russian invasion reminded us that, in a globalized world, 'all food systems are inherently interconnected' and that 'an invasion or occupation of any place is an attack on the global food system.'¹² Of course, one should not overestimate its effects: global food insecurity was already rising prior to 2020 and was heightened further during the Covid-19 pandemic.¹³ Still, if food security can be negatively impacted by armed conflict even in a relatively short time span, as shown by the speed with which the 2022 Russian invasion affected the global food markets, one may only imagine how even worse consequences may unfold in the case of protracted conflict.

Protracted armed conflict does not always involve full-scale military confrontations but can often linger in the form of low-level violence. The more a conflict lingers, the more it may jeopardize the provision of basic services—including access to food and means of livelihood—in the affected areas and society at large.¹⁴ The economic effects of protracted armed conflict may significantly lower not only the availability

⁶ Alexander Hay, Bryan Karney, and Nick Martyn, 'Reconstructing Infrastructure for Resilient Essential Services During and Following Protracted Conflict: A Conceptual Framework' (2019) 101 *International Review of the Red Cross* 1001, 1017.

⁷ *ibid.*

⁸ See, eg Bridget Conley and Alex de Waal, 'The Purposes of Starvation: Historical and Contemporary Uses' (2019) 17 *Journal of International Criminal Justice* 699, 700–02.

⁹ HRC, 'Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014—Report of the Detailed Findings of the Group of Eminent International and Regional Experts on Yemen' (3 September 2019) UN Doc A/HRC/42/CRP.1, paras 732ff.

¹⁰ Diane Desierto, 'The Human Right to Food, Freedom from Hunger, and SDG 2: Global Food Crisis and Starvation Tactics from the Russian Invasion of Ukraine' (*EJIL: Talk!*, 9 June 2022) <<https://www.ejiltalk.org/the-human-right-to-food-freedom-from-hunger-and-sdg-2-global-food-crisis-and-starvation-tactics-from-the-russian-invasion-of-ukraine/>> accessed 18 June 2022.

¹¹ *ibid.*; Moritz von Rochow, 'The Prohibition of Abusing a Dominant Position as a General Principle of International Law: Russia's Biggest Honey-pot in Ukraine' (*Opinio Juris*, 13 May 2022) <<https://opiniojuris.org/2022/05/13/the-prohibition-of-abusing-a-dominant-position-as-a-general-principle-of-international-law-russias-biggest-honey-pot-in-ukraine/>> accessed 18 June 2022. However, the positive effects of fertilizers should not be overestimated: Fakhri (n 3).

¹² *ibid.* (n 3).

¹³ HRC, 'Conflict and the Right to Food—Report of the Special Rapporteur on the Right to Food, Michael Fakhri' (29 December 2022) UN Doc A/HRC/52/40, para 13; also Fakhri (n 3).

¹⁴ On the related notion of 'cumulative impact': ICRC, 'Protracted Conflict and Humanitarian Action: Some Recent ICRC Experiences' (International Committee of the Red Cross 2016) 10.

of sustenance but also people's purchasing power, increasing the cost of living and thereby creating so-called war-poor populations and 'lost generations' of children.¹⁵

Over time, continuous engagement in protracted armed conflict may contribute to or determine losses of governmental effectiveness and authority and of the government's ability to cater to basic needs of the population, either in specific areas or across the whole territory of the state. The government may grow dependent on external funding deriving from international borrowing and aid, which often becomes an indispensable source of public income.¹⁶ If food prices increase, governments may be presented with a daunting dilemma: either incurring more debt to feed the population or prioritizing debt repayment instead of securing sufficient food, leading to more hunger.¹⁷ Situations of this kind may also open the door to the aggressive exploitation of natural resources, leading to further depletion of the environment and poor working conditions for locals due to ineffective labour protection¹⁸—which in turn may prejudice the quality and quantity of available food provision and the purchasing power of the population. Furthermore, at times governments, as parties to a protracted conflict, can lose authority over certain parts of their territory, either in remote rural areas or in urban centres. Non-state actors—such as armed groups or private companies—may step in to provide governance functions, but they may not be equipped with the resources necessary to ensure food security and defeat hunger.¹⁹

It is imperative, thus, that efforts are made to increase global food security by combining short-term emergency relief with medium and long-term plans to build capacity and reduce the risk of both food crises and armed conflict. Such combination of efforts seems to neatly mirror the goals of the so-called humanitarian-development-peace nexus, which many governmental and non-governmental actors endeavour to adopt as a guide to their actions. Moreover, as protracted conflicts unfold and continue to exist over the years, it is crucial to take up measures and initiatives aimed at minimizing negative impacts for food security and maintain sustainability of food provision even as hostilities unfold. While conflict does commonly result in food insecurity, there may be solutions available to ensure that food systems and markets continue to function properly.²⁰ A government's provision of food security in emergency times, potentially with the involvement or help of external humanitarian actors, has been hailed as an effective safety net (especially for the most vulnerable), with the potential to reduce societal tensions and help affected societies to transition towards peace.²¹

¹⁵ Tanja A Börzel and Thomas Risse, *Effective Governance Under Anarchy: Institutions, Legitimacy, and Social Trust in Areas of Limited Statehood* (CUP 2021) 34–42, 176–80.

¹⁶ Börzel and Risse (n 15), 216–28.

¹⁷ Fakhri (n 3).

¹⁸ See Ch. 1 Section B.2, citing Tata Precillia Ijang and Cleto Ndikumagenge, 'Dependency on Natural Resources: Post-Conflict Challenges for Livelihoods Security and Environmental Sustainability in Goma, The Democratic Republic of Congo' (2013) 23 *Development in Practice* 372, 372–88; Irene Costantini, 'Statebuilding and Foreign Direct Investment: The Case of Post-2003 Iraq' (2013) 20 *International Peacekeeping* 263, 263–79; Leo Zulu and Sigismund Wilson, 'Whose Minerals, Whose Development? Rhetoric and Reality in Post-Conflict Sierra Leone' (2012) 43 *Development and Change* 1103, 1103–31.

¹⁹ Börzel and Risse (n 15) 34–42, 176–80.

²⁰ Eg the measure urged by UNSC Res 2573 (27 April 2021) UN Doc S/RES/2573, para 6; HRC (n 13), para 12.

²¹ Lander and Richards (n 2) 692.

For the relevant duty-bearers, these efforts are also a way of complying with applicable positive duties to which they are subject under international law. Such positive duties, deriving for instance from international humanitarian law and international human rights law, must be combined with negative ones, such as to refrain from conduct which could directly or indirectly lead to food insecurity, hunger, and starvation. An analysis grounded in international law necessarily starts from the primary actor in the international legal system, that is, states. The fact that numerous humanitarian and development organizations shoulder heavy weight in addressing food crises should not distract from the fact that states continue to bear precise legal duties—though, of course, leaving space for those organizations to operate and to fulfil their mandate or mission. Furthermore, one should not forget the duties of non-state armed groups, especially when and where they control territory: since most ongoing protracted armed conflicts in the world may be classified as non-international armed conflicts, that is, conflicts where at least one party is a non-state actor, their role is often crucial and consideration of their responsibility should not be omitted.²²

B. The International Legal Framework on Food Crises and Starvation

Clearly, international law does not offer a magical formula to solve the problem of conflict-related food insecurity. Yet, it does offer some tools to deal with it, informing and guiding the policy and practice of the relevant duty-bearers, most notably states. The relevant legal framework is wide, and it includes various branches of international law. In this chapter, for reasons of space and expertise, I will draw the reader's attention to rules and principles deriving from two branches in particular: international humanitarian law (IHL, also known as *jus in bello*, or the law of armed conflict), and international human rights law (IHRL). These two should not, however, be mistaken as being exhaustive of all international law that has to do with conflict-related food insecurity: just to mention one more branch, the international law of the sea also provides for relevant rules, for instance those pertaining to the passage of ships carrying food crops through areas under a state's jurisdiction.²³ And above all, one must remember that international law prohibits states from using or threatening the use of force against the territorial integrity or political independence of other states, as epitomized in article 2(4) of the United Nations Charter.²⁴ It is plainly obvious that, if states abided by this fundamental rule, conflicts would be less numerous—with positive effects on global food security levels. Granted, respect for the ban on the use of force would not prevent internal (*rectius*, 'non-international') armed

²² Among others and with specific respect to the right to food, Simone Hutter, 'Starvation in Armed Conflicts: An Analysis Based on the Right to Food' (2019) 17 *Journal of International Criminal Justice* 723, 747ff.

²³ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, arts 17ff on the right of innocent passage.

²⁴ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter).

conflicts—representing the vast majority of protracted conflicts on the planet—but it would be a positive contributor to the reduction of world hunger, nonetheless.

Notably, even limiting the analysis to the mentioned fields of IHL and IHRL, there are still challenges in applying international law to conflict-related food insecurity, especially regarding how well the law addresses the complexity of the issue and the practicability of legal responses. First, it is hard to clearly discern all the multiple facets of the phenomenon by using exclusively legal lenses, since *inter alia* aspects of economics, history, political science, and sociology are involved to explain the reasons for food security or insecurity in a given society at a given historical moment. Second, the context of an armed conflict may alter the relevant actors' perception: parties to an armed conflict in particular may be swayed by the military mindset to focus on the aim to gain a military advantage against the opponent, thus overlooking how their conduct affects short, medium, and long-term availability of food resources. Third, states—especially those observing a conflict from the outside—may be tempted to prioritize their own sovereign interests instead of the wellbeing of other communities. As a result, they may refrain from or delay taking action to address or alleviate food crises. Fourth, in any case, even the most altruistic and well-intentioned actors may face difficulties in adequately predicting, preventing, and responding to conflict-related food insecurity.²⁵

1. International Humanitarian Law and Food Security

As is well known, IHL implicitly accepts that there will be at least *some* death and destruction in an armed conflict, including events that will inevitably affect the availability of food and the civilian population's ability to obtain an adequate amount of it. In this sense, considering how food insecurity and crises can heighten tensions and at times prolong conflicts, IHL is not necessarily and not always conducive to faster and decisive progress towards peace. Yet, the 'damage control' mentality behind IHL can be beneficial from a food-security perspective: if the rules of distinction, proportionality, and precautions are respected—by state and non-state parties to a conflict—civilian infrastructure is more often preserved, with positive effects for the civilian population both during and after the conflict.²⁶

Conventional and customary IHL encompass, in fact, several provisions to counter the negative effects of conflicts on the availability of sustenance for the civilian population. First and foremost, article 54(1) of the First Additional Protocol to the Geneva Conventions (Protocol I)²⁷ and article 14 of the Second Additional Protocol to the

²⁵ These challenges are discussed more in detail in Antonio Coco, Jérôme de Hemptinne, and Brian Lander, 'International Law Against Starvation in Armed Conflict: Epilogue to a Multi-Faceted Study' (2019) 17 *Journal of International Criminal Justice* 913, 914–19.

²⁶ 'The ICRC and the "Humanitarian-Development-Peace Nexus" Discussion: In Conversation with Filipa Schmitz Guinote, ICRC Policy Adviser' (2019) 101 *International Review of the Red Cross* 1051, 1064–66.

²⁷ Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Protocol I).

Geneva Conventions (Protocol II)²⁸—which are deemed to reflect a rule of customary international law on the issue²⁹—prohibit the starvation of civilians as a method of warfare. Article 54(2) of Protocol I and the second part of article 14 of Protocol II—also reflecting customary international law³⁰—follow suit by prohibiting attacking, destroying, removing, or rendering useless objects indispensable to the survival of the civilian population. It is understood that objects indispensable to the survival of the civilian population comprise—among other things—‘foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.’³¹ Article 54(2) of Protocol I specifies that the conduct in question is prohibited when carried out for the specific purpose of denying the objects for their sustenance value to the civilian population ‘whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.’ Furthermore, article 54(3) of Protocol I establishes that attacks and related actions against objects indispensable to the survival of the civilian population (even when these are being used in direct support of military action) cannot be taken if they may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement—and this regardless of the relevant belligerent’s purpose.³²

However, article 54(5) of Protocol I contains an exception, allowing parties to the conflict to attack, destroy, remove, or render useless even objects indispensable to the survival of civilians located on its national territory when acting with the purpose to defend such territory against an invasion, provided that the conduct in question is required by imperative military necessity.³³ This type of conduct—often referred to as a ‘scorched earth’ tactic or practice and intended to avoid enemy appropriation of useful goods—normally leads to devastating effects for food security in already hard times like those of armed conflict. No similar exception appears to exist in the law applicable to non-international armed conflicts.³⁴

Importantly, conduct in violation of the aforementioned rules may constitute a war crime if it amounts to ‘intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions.’³⁵ Conduct

²⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (Protocol II).

²⁹ Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, vol 1 (CUP 2005) Rule 53, 428ff (hereafter ICRC Customary IHL Study).

³⁰ *ibid* rule 54.

³¹ Protocol I, art 54(2); Protocol II, art 14.

³² Dapo Akande and Emanuela-Chiara Gillard, ‘Conflict-Induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare: The Underlying Rules of International Humanitarian Law’ (2019) 17 *Journal of International Criminal Justice* 753, 764.

³³ Protocol I, art 54(5); Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Nijhoff 1987) 658–59, paras 2116–2123.

³⁴ *ibid* 1459, paras 4808–4811. ICRC Customary IHL Study (n 29) 192–193.

³⁵ Both in international and non-international armed conflicts, by effect of an amendment to the Rome Statute adopted on 6 December 2019: Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 (Rome Statute), art 8(2)(b)(xxv) and art 8(2)(e)

which does not satisfy this definition may still be captured by other core international crimes, including crimes against humanity.³⁶

In addition, as already hinted at in this section, the fundamental conduct-of-hostilities rules of distinction, proportionality, and precautions continue to apply, protecting civilian objects (including food and food-related objects) against (the effects of) attacks.³⁷ Notably, parties to a conflict have an obligation to take all feasible precautions against the effects of attacks with a view to protecting civilian infrastructure,³⁸ including infrastructure critical to the provision of food for the civilian population.

Another layer of protection, finally, is offered by the provisions on humanitarian access and relief. Parties to an armed conflict have primary responsibility for ensuring that adequate supplies of food, water, and other necessary objects are available to and accessible by the civilian population. The principle applies also to special situations such as belligerent occupation: in that respect, article 55 of Geneva Convention IV³⁹ places on the occupying power the duty of ensuring that the civilian population has adequate food and medical supplies. Failing that, parties to a 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.⁴⁰ Generally, the provision of humanitarian relief and assistance is conditional on the consent of the relevant party to the conflict.⁴¹ However, conventional and customary IHL provide for the belligerents' duty not to arbitrarily withhold their consent to offers to conduct humanitarian relief operations.⁴² After the relevant belligerent has given such consent, they have an obligation to 'allow and facilitate rapid and unimpeded passage of supplies, equipment, and personnel involved in such operations.'⁴³

Yet, while these rules have the potential to contribute to food security in protracted conflict, their practical importance should not be over-estimated. For instance, the

(xix). On strategies for prosecution, Wayne Jordash, Catriona Murdoch, and Joe Holmes, 'Strategies for Prosecuting Mass Starvation' (2019) 17 *Journal of International Criminal Justice* 849.

³⁶ Manuel J Ventura, 'Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities' (2019) 17 *Journal of International Criminal Justice* 781.

³⁷ Even though they do not always cover 'non-attack' situations: Christian Durisch Acosta, 'It Takes Two: The Protection of Civilians during Sieges under the IHL Prohibition against Starvation and the Right to Food' (*Opinio Juris*, 20 December 2021) <<https://opiniojuris.org/2021/12/20/it-takes-two-the-ihl-protection-of-civilians-during-sieges-under-the-prohibition-against-starvation-and-the-right-to-food/>> accessed 18 June 2022.

³⁸ Protocol I, art 58; ICRC Customary IHL Study (n 29) Rule 22.

³⁹ Geneva Conventions (adopted 12 August 1949, entered into force 21 October 1959) 75 UNTS 31, 85, 135, 287 (Geneva Conventions I-IV).

⁴⁰ Geneva Convention IV, arts 10, 23, 30, 59, 108–09; Protocol I, arts 70–71; Protocol II, art 18(2); ICRC Customary IHL Study (n 29) Rule 55.

⁴¹ Geneva Convention I, art 9; Geneva Convention II, art 9; Geneva Convention III, art 9; Geneva Convention IV, art 10; Protocol II, art 18(2).

⁴² Consent which must be given by effect of Geneva Convention IV, art 23; Protocol I, art 70(2); Protocol II art 18(2) pursuant to rules which are deemed to be customary as witnessed in Rule 55 of the ICRC Customary IHL Study (n 29); Akande and Gillard (n 32) 770ff; Dapo Akande and Emanuela-Chiara Gillard, 'Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict' (Oxford Institute for Ethics, Law and Armed Conflict, commissioned by the OCHA, 2017).

⁴³ Geneva Convention IV, art 23; Protocol I, art 70(2); ICRC Customary IHL Study (n 29) Rules 55 and 56; Akande and Gillard (n 32) 770.

language of article 54(1) of Protocol I seems to support the idea that only conduct carried out with the purpose of starving civilians is prohibited—and that, therefore, incidental starvation of civilians would remain lawful⁴⁴—even if the rest of the article makes clear that in certain situations also the incidental starvation of civilians is prohibited.⁴⁵ This has led to debates on the kind of intent (as a mental element) required for the corresponding war crime.⁴⁶ Additionally, it could be noted that the prohibition of starvation only concerns the starvation of civilians, leaving out the starvation of combatants and enemy fighters—an undoubtedly outrageous practice which clashes with the protection of non-derogable human rights such as the right to be free from cruel, inhumane, and degrading treatment.⁴⁷ Limiting the prohibition of starvation to civilians only is also out of tune with the reality that supply chains for civilians and combatants are often inextricably linked: sieges and blockades aimed at starving combatants or enemy fighters will often harm civilians as well.⁴⁸ Moreover, attacks against objects indispensable for the survival of civilians are not the only military operations which can negatively impact food security: let us think, for instance, of the longstanding effects of armed conflict on the environment, which have the potential to frustrate a population's ability to grow crops for a long time after the conflict. Rules of IHL on this point do not appear to protect food security effectively.⁴⁹

2. Duties to Respect, Protect, and Fulfil Human Rights in Protracted Conflicts, with a View towards Food Security

There is growing consensus by now that IHRL continues to bind states during armed conflict—with debates focusing mostly on how this body of rules interacts and coordinates with IHL. The same is true with respect to those rules which concern food security.⁵⁰ From a food-security perspective, the objectives of the two regimes are often aligned, especially when considering 'negative' duties not to attack and/or render useless objects indispensable for the survival of civilians. Such duties may be easily read into the rules establishing obligations to respect the rights to life⁵¹ and an adequate standard of living, including adequate food, clothing, housing,⁵² and health.⁵³ In line with the chapter's overall focus, the rest of this section will consider the right to food

⁴⁴ *ibid* 761–62.

⁴⁵ *ibid* 762–65.

⁴⁶ Jordash, Murdoch, and Holmes (n 35) 854–63.

⁴⁷ HRC (n 13), para 66.

⁴⁸ *ibid* para 67.

⁴⁹ *ibid* para 64 (footnotes omitted).

⁵⁰ Similarly Simone Hutter, 'The Right to Food in Armed Conflict' in Bridget Conley and others (eds), *Accountability for Mass Starvation: Testing the Limits of the Law* (OUP 2022) 140.

⁵¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1967) 99 UNTS 171 (ICCPR), art 6. Cf Mona Rishmawi, 'Protecting the Right to Life in Protracted Conflicts: The Existence and Dignity Dimensions of General Comment 36' (2019) 101 *International Review of the Red Cross* 1149.

⁵² ICCPR, Art 11; Hutter, 'Starvation in Armed Conflicts: An Analysis Based on the Right to Food' (n 22); Desierto (n 10).

⁵³ ICCPR, Art 12.

in particular, even though some considerations may be applicable to the other mentioned rights *mutatis mutandis*.

Guaranteeing everyone's right to adequate food has been considered an indispensable component of human dignity.⁵⁴ In particular, article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵⁵ obliges state parties to 'take appropriate steps to ensure the realization' of the right to an adequate standard of living including adequate food (para 1) and recognizes the 'fundamental right of everyone to be free from hunger' (para 2).⁵⁶ As is common in IHRL, the legal framework on the right to food comprises a triple obligation to respect, to protect, and to fulfil the right. Full compliance with IHRL, thus, goes far beyond a mere duty to refrain from destroying food crops and from preventing access to food resources (*obligation to respect*). According to the already cited article 11(2) ICESCR,

States Parties . . . shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

States must also protect the enjoyment of the right to food against harm or risk of harm posed by the conduct of third or private parties, such as companies or non-state armed groups. For instance, in the words of the Committee on Economic, Social and Cultural Rights (CESCR), states must 'ensure that enterprises or individuals do not deprive individuals of their access to adequate food' (*obligation to protect*).⁵⁷ Failure to prevent such harmful conduct or to investigate, punish, and ensure redress—where preventive measures have proven ineffective—constitutes a violation of the international legal framework on the right to food.⁵⁸ Hutter has noted that an example of such violation could be represented by the failure of Sudan's government to prevent food insecurity caused in 2003 by the Janjaweed militia's actions in the Darfur region.⁵⁹ Notably, obligations to protect the civilian population against harm to their human rights caused by third parties continue to apply even in areas where the government's authority is

⁵⁴ CESCR 'General Comment No. 12: The Right to Food' (12 May 1999) UN Doc E/C.12/1999/5, para 4. On the concept: Andrea Gattini, Rosana Garciandia, and Philippa Webb (eds), *Human Dignity and International Law* (Brill Nijhoff 2020); Genevra Le Moli, *Human Dignity in International Law* (CUP 2021).

⁵⁵ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1967) 933 UNTS 3 (ICESCR).

⁵⁶ There is also increasing recognition that non-state actors may incur similar responsibilities, especially when they are in control of a given territory: see, among others and with specific respect to the right to food, Hutter, 'Starvation in Armed Conflicts: An Analysis Based on the Right to Food' (n 22) 747ff.

⁵⁷ CESCR (n 54) para 15.

⁵⁸ CESCR (n 54) para 19; Hutter, 'The Right to Food in Armed Conflict' (n 50) 134.

⁵⁹ Hutter, 'The Right to Food in Armed Conflict' (n 50) 134–135.

being challenged, such as in areas under the control of non-state actors—provided that the government maintains at least some degree of control.⁶⁰

In addition to obligations to respect and protect the right to food, states must ‘proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security,’ if need be by providing adequate food directly to those in need (*obligation to fulfil*).⁶¹ Since the adoption of these measures may become more and more difficult in times of (protracted) conflict, it is even more crucial that some measures aimed at fulfilling the right to food are put in place in peacetime, prior to the emergence of (new) conflict.⁶² Arrangements for the provision of humanitarian relief and assistance in times of (protracted) conflict may be seen as measures of compliance with the obligation to fulfil the right to food.

Compliance with positive obligations relating to the right to food, as with other rights, is measured by a standard of due diligence.⁶³ In other words, duty-bearers are expected to put in place measures which are ‘reasonable’⁶⁴ or ‘appropriate’⁶⁵ according to the extant circumstances and in light of the duty-bearer’s capacity to act, with a view to protecting or fulfilling the right to food against a foreseeable risk.⁶⁶ Granted, the right to an adequate standard of living and its component, the right to food, are subject to progressive realization, which in the context of a protracted conflict may happen to be halted or slowed down. Nonetheless, even in situations of protracted conflict, states must at a minimum ensure individuals’ freedom from hunger,⁶⁷ also as a means of safeguarding the right to life. Such a minimum core component of the right to food has been interpreted as a duty to ensure the ‘minimum nutritional intake necessary for survival,’ which may appear to be a very low threshold.⁶⁸ Yet, the CESCR has clarified that duty-bearers must ensure provision of this minimum level of food

⁶⁰ *Assanidze v Georgia*, Judgment (Grand Chamber) App no 71503/01 (ECtHR, 8 April 2004) paras 139–143; *Ilaşcu and others v Moldova and Russia*, Judgment (Grand Chamber) App no 48787/99 (ECtHR, 8 July 2004) para 333; *Catan and others v Moldova and Russia*, Judgment (Grand Chamber) App nos 43370/04, 8252/05, and 18454/06 (ECtHR 19 October 2012) paras 109–110.

⁶¹ CESCR (n 54) para 15.

⁶² Hutter, ‘The Right to Food in Armed Conflict’ (n 50) 135.

⁶³ Björnstjern Baade, ‘Due Diligence and the Duty to Protect Human Rights’ in Heike Krieger, Anne Peters, and Leonhard Kreuzer (eds), *Due Diligence in the International Legal Order* (OUP 2020) 92 citing International Law Association (ILA), ‘Study Group on Due Diligence in International Law, First Report’ (ILA 2014) 14; Timo Koivurova and Kritika Singh, ‘Due Diligence’ in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law* (Oxford Public International Law Online, last updated August 2022) <<https://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e1034?prd=EPIL>> accessed 31 July 2023.

⁶⁴ Among others, Baade (n 63) 97; more in general on the standard of due diligence eg, *Alabama Claims (United States v UK)* (1872) 29 RIAA 125, 127, 129, 131–132; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, (2007) ICJ Rep 43, paras 430–431; International Law Association (ILA), ‘Study Group on Due Diligence, Second Report’ (2016) 2.

⁶⁵ *The Environment and Human Rights*, Advisory Opinion OC-23/17 (2017) Inter-American Court of Human Rights Series A No 23 paras 123 and 174.

⁶⁶ Koivurova and Singh (n 63) paras 17, 19.

⁶⁷ CESCR (n 54) para 14; Hutter, ‘Starvation in Armed Conflicts: An Analysis Based on the Right to Food’ (n 22) 726.

⁶⁸ Hutter, ‘The Right to Food in Armed Conflict’ (n 50) 133, citing UNGA, ‘Interim Report of the Special Rapporteur on the Right to Food’ (21 July 2017) UN Doc A/72/188, para 52.

regardless of the (un)availability of resources.⁶⁹ Even such a basic level of protection of the right to food may engender positive effects for the building or preservation of peace.⁷⁰

C. Complying with International Law towards Sustainable Food Security and Peace

The existence of the highlighted legal framework alone is obviously not sufficient to tackle food crises and insecurity in protracted conflict. Especially given the flexibility of many of the rules presented in section B, the key to building sustainable food security lies in the policy initiatives and concrete measures taken to implement the legal framework.

Ending hunger, including conflict-related hunger, has been identified as a sustainable development goal in the 2015 UN Agenda for Sustainable Development.⁷¹ In fact, the realization of the right to food and the achievement of global food security are long-term goals, to be achieved for present and future generations.⁷² Against this backdrop, the United Nations Security Council recognized the link between armed conflict and food insecurity in its Resolution 2417 (2018), which has been viewed as a call for more decisive action to break the vicious cycle between the two phenomena, mentioned in the first section. The Resolution highlights the centrality of IHL and IHRL in this context, recalling the obligations of

respecting and protecting civilians and taking constant care to spare civilian objects, including objects necessary for food production and distribution such as farms, markets, water systems, mills, food processing and storage sites, and hubs and means for food transportation, and refraining from attacking, destroying, removing or rendering useless objects that are indispensable to the survival of the civilian population, such as foodstuffs, crops, livestock, agricultural assets, drinking water installations and supplies, and irrigation works, and respecting and protecting humanitarian personnel and consignments used for humanitarian relief operations,⁷³

and stressing that violations of IHL and IHRL can be drivers of forced displacement⁷⁴ and condemning the denial of access to humanitarian relief operations.⁷⁵ Three years after Resolution 2417, the UN Security Council followed up with Resolution 2573

⁶⁹ CESCR, 'An evaluation of the obligation to take steps to the "maximum of available resources" under an optional Protocol to the Covenant—Statement' (21 September 2007) UN Doc E/C.12/2007/1, para 4, cited by Hutter, 'The Right to Food in Armed Conflict' (n 50) 137.

⁷⁰ Lander and Richards (n 2) 690–94.

⁷¹ UNGA, 'Transforming Our World: the 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc A/RES/70/1, Goal 2.

⁷² Hutter, 'The Right to Food in Armed Conflict' (n 50) 145.

⁷³ UNSC Res 2417 (2018) UN Doc S/RES/2417(2018), para 1.

⁷⁴ *ibid* para 2.

⁷⁵ *ibid* para 6.

(2021), which reiterated some of the same principles⁷⁶ and added further directives for parties to conflict. In particular, the Resolution urged parties to armed conflict to

protect civilian infrastructure which is critical to the delivery of humanitarian aid including for the provision of essential services concerning vaccinations and related medical care and other essential services to the civilian population in armed conflict and to ensuring the proper functioning of food systems and markets in situations of armed conflict⁷⁷

and encouraged ‘all efforts to protect objects indispensable to the survival of the civilian population and civilian infrastructure that is critical to enable the delivery of essential services in armed conflict.’⁷⁸

Yet, these resolutions do little to address the root causes of conflict and food insecurity. Resolution 2417, in particular, fell short of establishing proactive measures to counter food insecurity, other than recalling to duty-bearers what they must *not* do. Granted, states are urged to protect infrastructure critical to food security and to conduct prompt, impartial, and effective investigations into potential violations of relevant international law provisions,⁷⁹ but these calls do not seem to go far enough. A reporting mechanism—by which parties to an armed conflict had to explain how they took action in line with the directives of the resolution—would have undoubtedly been more incisive. Instead of that, however, Resolution 2417 simply mandates the Secretary General to include the matter of conflict-related food insecurity in its own regular reporting on country-specific situations, promptly bringing the matter to the Council’s attention in the most extreme cases,⁸⁰ while Resolution 2573 requests the Secretary General to include a sub-section on the protection of objects indispensable to the survival of the civilian population in the reports on the protection of civilians.⁸¹ The UN Special Rapporteur on the right to food has already raised the issue of how to make this reporting more frequent and robust, so that it may lead to actual action.⁸²

Is this all that can be done to combat conflict-related food insecurity? Hardly so. As explained in section B, while some food-related obligations established in IHL and IHRL are obligations of result (eg the prohibition of starvation as a method of warfare, or the duty to ensure freedom from hunger), many other obligations are obligations of conduct—for instance, the obligation of parties to a conflict to protect infrastructure critical to food security as a precaution against the effects of attacks, as well as states’ obligation to protect and fulfil the rights to food and to an adequate standard of living, both require duty-bearers ‘only’ to exercise due diligence, that is, to act to the best of their ability in order to achieve the relevant rules’ aims.⁸³ Considering that many of

⁷⁶ UNSC Res 2573 (2021) UN Doc S/RES/2573(2021), eg at paras 1, 4, 5

⁷⁷ *ibid* para 6.

⁷⁸ *ibid* para 9.

⁷⁹ UNSC Res 2417 (2018) UN Doc S/RES/2417(2018), respectively, paras 7 and 10.

⁸⁰ *ibid* paras 11f.

⁸¹ UNSC Res 2573 (2021) UN Doc S/RES/2573(2021), para 12.

⁸² Fakhri (n 3).

⁸³ About which see, *inter alia*, the chapters by Björnstjern Baade and Marco Longobardo in Heike Krieger, Anne Peters, and Leonhard Kreuzer (eds), *Due Diligence in the International Legal Order* (OUP 2021).

these obligations of conduct set a flexible standard of due diligence for the duty-bearer, to be understood in light of the extant circumstances and of the duty-bearer's capacity, the protractedness of the conflict surely plays a role in defining the content of what is due. The flexible nature of these obligations also means that there will not always be a violation to investigate or about which to report. At the same time, there will almost always be room to improve the way in which a state performs its duty and to assist with compliance. Indeed, flexibility is not necessarily a detrimental feature of these obligations, allowing duty-bearers to tailor their implementation conduct to specific needs and circumstances and to seek short, medium, and long-term goals in pursuance of a strategy which seeks to tackle not only food security but also economic growth, the fight against poverty, and the improvement of nutrition practices and realities.⁸⁴

So, what can and should states and other relevant international actors do in this sense, especially in times of protracted conflict? Possible lines of action could be divided broadly into two categories: (a) pre-conflict measures, which include institutional and legal arrangements and, more generally, capacity-building and preventive measures; (b) measures for response to crises once they manifest themselves. In both cases, measures of international cooperation play a key role. It is to these measures that I now turn.

1. Pre-Conflict Measures

Ideally, measures ensuring food security and reducing the risk of food crises should be in place already before a conflict erupts.⁸⁵ In fact, as said in section A, food security per se is likely to reduce the risk of conflict. These could include capacity-building efforts by the relevant state, sensibilization and onboarding campaigns with non-state actors,⁸⁶ initiatives (eg the building of new infrastructure) to guarantee that food production, supply, and distribution chains can operate even in emergency situations, and the effective and regular monitoring of the state of soil and its potential for agriculture.⁸⁷ Supporting 'agri-food value chains'—that is, strategic partnerships/networks of interdependent actors engaged in activities from farming to selling food products, adding value at each stage⁸⁸—may have beneficial effects in ensuring resilience and supporting livelihoods during crises and conflict,⁸⁹ even if there is a risk that

⁸⁴ Hutter, 'The Right to Food in Armed Conflict' (n 50) 152.

⁸⁵ *ibid* 151.

⁸⁶ These measures have been suggested in Oxford Institute for Ethics, Law and Armed Conflict and World Food Programme, 'The Role of Law and Policy in Confronting Conflict-Induced Hunger' (Event Report, 10 and 11 November 2021) <<https://www.elac.ox.ac.uk/research/the-role-of-law-and-policy-in-confronting-conflict-induced-hunger/>> accessed 18 June 2022.

⁸⁷ Mentioned, as examples of necessary reconstruction efforts after the conflict, by Hay, Karney, and Martyn (n 6).

⁸⁸ Eg, Ontario Government Ministry of Agriculture, Food, and Rural Affairs, Agri-Food Network and Supply Chain as Part of the Agricultural System' <<https://www.ontario.ca/page/agri-food-network-and-supply-chain-part-agricultural-system>> accessed 12 August 2025.

⁸⁹ International Food Policy Research Institute (IFPRI), *Global Food Policy Report 2023: Rethinking Food Crisis Responses* (IFPRI 2023) 44ff.

the longer the crisis or conflict lasts, the more they will suffer and become unable to operate properly.

Overall, anticipatory action is key: especially in fragile and conflict-affected settings, this should be built on effective data collection and analysis, including impact assessments and developing anticipatory action frameworks that pre-identify vulnerabilities, funding triggers, and available financial resources.⁹⁰ Additionally, it is important to assess the targeting of humanitarian assistance to ensure that all groups are included and to support interventions that reflect the humanitarian-development-peace nexus, such as nutrition-sensitive programming, local procurement, and aid for permanent safety nets.⁹¹ Mechanisms should be put in place to ensure that appropriate and sufficient funding is readily and effectively available in case there is a crisis to respond to and that investment (including private investment) in long-term resilience plans should be encouraged.⁹² The UN Special Rapporteur on the right to food has also highlighted, among desirable lines of action, agrarian reforms and measures with a view to increase biodiversity, protect land rights, and curtail corporate power.⁹³ In addition, in pre-conflict settings as well as during conflict, school feeding programmes have been suggested as a possible helpful measure for their potential to reduce societal tension and disincentivize recruitment into armed groups,⁹⁴ and to build social cohesion after a conflict.⁹⁵ In general, the strengthening of national food systems is seen as reinforcing the legitimacy of the state and easing the relationship between the government and the people,⁹⁶ with potentially beneficial effects on the resolution or avoidance of conflict.

Such positive measures should be accompanied and supported by the establishment of institutionalized mechanisms of regular monitoring and reporting by duty-bearers, perhaps with the involvement of regional organizations, to stimulate more effective action and compliance with international law, and to provide feedback on the best ways to achieve them.⁹⁷ When it comes to monitoring specifically, there are initiatives led by some states—such as the US-led ‘Famine Early Warning Systems Network’⁹⁸—but it has been suggested that these should be complemented by ‘a more independent, flexible and efficient mechanism’⁹⁹ using indicators such as ‘incidents of forced displacement, market analysis in affected areas, attacks on markets and agricultural production.’¹⁰⁰ Steps to improve early warning systems for food crises could also include: expanding country coverage and the frequency of acute food insecurity analysis; revising procedures for declaring the existence of famines and food crises

⁹⁰ *ibid* 36.

⁹¹ *ibid*.

⁹² *ibid* 6 and 17f.

⁹³ Fakhri (n 3).

⁹⁴ Donald Bundy and others, *Rethinking School Feeding Social Safety Nets, Child Development, and the Education Sector* (World Bank 2009).

⁹⁵ Lander and Richards (n 2) 691.

⁹⁶ *ibid*.

⁹⁷ Oxford Institute for Ethics, Law and Armed Conflict and World Food Programme (n 86).

⁹⁸ ‘About FEWS NET’ (FEWS NET Website) <<https://fews.net/about>> accessed 26 April 2023.

⁹⁹ Lander and Richards (n 2) 696–697.

¹⁰⁰ Joanna Macrae and Anthony Zwi, ‘Food as an Instrument of War in Contemporary African Famines: A Review of the Evidence’ (1992) 16 *Disasters* 299.

and making them operational in conflict-affected areas; integrating various early warning systems through collaborative efforts by international and local actors; and strengthening the analysis of factors driving crises in specific locations to inform long-term responses that build resilience and reduce the risk of food crises.¹⁰¹

2. Response Measures

It may happen that preventive measures have not been taken or have proven ineffective in preventing food insecurity. Helpful guidelines for response in such a case have been formulated in the 2015 FAO ‘Framework for Action for Food Security and Nutrition in Protracted Crises’, which articulates eleven principles to be implemented by relevant actors.¹⁰² The principles are organized in three groups: first, principles aimed at addressing ‘critical manifestations’ of food insecurity and purporting to meet the immediate humanitarian needs of those affected;¹⁰³ second, principles aimed at adapting to specific challenges, such as reaching affected populations, promoting gender equality, and promoting effective financing;¹⁰⁴ and third, principles—which are at the same time preventive and responsive—aimed at contributing to the resolution of underlying causes of food insecurity and undernutrition in protracted crises, which include contributions to peacebuilding through food security, managing natural resources sustainably, and promoting effective national and local governance.¹⁰⁵ The operationalization of these principles recalls several of the international duties described in the previous section. For instance, principle 3 (‘reach affected populations’) stresses the need for relevant actors to enable that food and livelihood support are effectively provided to the people affected by protracted crises, *inter alia* by ‘promoting and facilitating unimpeded, safe and rapid access to affected communities in order to provide humanitarian food and livelihoods assistance’ and ‘refraining from unilateral measures not in accordance with international law, including the Charter of the United Nations, and which endanger food security and nutrition.’¹⁰⁶ Relevant stakeholders are also encouraged to take steps to ‘respect the existing rights under international law of members of affected and at risk populations, and their ability to access and use their natural resources.’¹⁰⁷

Effective response to food crises also necessitates strong cooperation and coordination at the international level, between the relevant states, regional organizations, and international organizations. At the very minimum, where belligerents have engaged in practices of starvation of civilians, there is a good argument—grounded in the possible characterization of the prohibition of starvation as a peremptory norm of international law—to say that other states have an obligation not to render assistance

¹⁰¹ IFPRI, *Global Food Policy Report 2023* (n 89) 20.

¹⁰² Committee on World Food Security (n 4).

¹⁰³ *ibid* principles 1 and 2.

¹⁰⁴ *ibid*, respectively, principles 3, 6, and 8.

¹⁰⁵ *ibid* principles 9, 10, and 11.

¹⁰⁶ *ibid* 10, para 25, respectively at (i) and (v).

¹⁰⁷ *ibid* 16 (principle 9, ‘Contribute to Peacebuilding through Food Security and Nutrition’), para 32(v); 17 (principle 10, ‘Manage Natural Resources Sustainably and Reduce Disaster Risks’), para 33(viii).

in maintaining the situation and to cooperate to bring it to an end.¹⁰⁸ But measures of international cooperation should go well beyond that: for instance, with respect to possible violations of IHL related to food and other objects indispensable to the survival of the civilian population, states other than those directly involved in the conflict have a general obligation to cooperate as required by their duty to ensure respect for IHL enshrined in article 1 common to the Geneva Conventions I–IV. International cooperation can also be seen as a way of complying with the duty to protect and fulfil the right to an adequate standard of living, for instance by the provision of technical assistance, capacity-building, and humanitarian relief to populations in need.¹⁰⁹

D. Conclusion

This chapter has sought to explore the link between food crises and protracted conflict, highlighting how the two concepts feed on each other in a vicious cycle which states and other international and local actors must strive to break. While international law—especially IHL and IHRL—provides for a basic legal framework for addressing food crises in times of conflict, I have sought to show that many of the relevant obligations leave a considerable margin of appreciation and flexibility to the respective duty-bearers, be they states or non-state actors. While some may read this flexibility as a negative feature, hindering efforts to promote accountability, the chapter has sought to show that the implementation of the relevant obligations to protect civilians from hunger and to protect or ensure all individuals' right to food could comprise a vast array of measures, either preventive or responsive in nature. In fact, building sustainable food security in protracted conflict is a matter of political will more than of applicable rules. While there is always room to strengthen the relevant international legal framework and make it more detailed, the extant rules already provide valuable guiding principles and allow for tailored and inventive solutions, which could be explored in practice.

¹⁰⁸ cf the rules reflected in arts 40 and 41 International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/83.

¹⁰⁹ Actions encouraged by UNSC Res 2573 (2021) UN Doc S/RES/2573(2021), para 10.